

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

APPLICATION RECORD
(Application returnable June 27, 2016)

(VOLUME II OF II)

June 24, 2016

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INDEX

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INDEX

TAB	DOCUMENT	PAGES
<i>VOLUME I</i>		
1.	Notice of Application	1-13
2.	Draft Interim Receivership Order	14-26
3.	Draft Interim Receivership Order blacklined to Model Receivership Order	27-44
4.	Draft Receivership Order	45-60
5.	Draft Receivership Order blacklined to Model Receivership Order	61-79
6.	Affidavit of Andrew Prunier sworn June 23, 2016	80-92

TAB	DOCUMENT	PAGES
A	Exhibit "A" – Corporation Profile Report of FJI	93-98
B	Exhibit "B" – JSN Group Organization Chart	99-100
C	Exhibit "C" – Credit Agreement dated July 18, 2013	101-221
D	Exhibit "D" – Credit Agreement First Amending Agreement dated September 25, 2014	222-235
<i>VOLUME II</i>		
E	Exhibit "E" – FJI Limited Guarantee Agreement dated July 18, 2013	236-248
F	Exhibit "F" – General Security Agreement dated July 18, 2013	249-302
G	Exhibit "G" – Accommodation Agreement dated May 16, 2016	303-337
H	Exhibit "H" – DIP Credit Agreement dated May 16, 2016	338-478
I	Exhibit "I" – PPSA Search Results	479-480
J	Exhibit "J" – Demand letter dated May 16, 2016 and BIA Notice	481-487
K	Exhibit "K" – Amended and Restated Initial Order dated May 18, 2016	488-515
L	Exhibit "L" – Demand letter from D. Rosenblat to Forever Jewellery Inc. dated May 26, 2016	516-518
M	Exhibit "M" – Letter from Monitor's counsel to FJI dated May 27, 2016	519-521
N	Exhibit "N" – Reservation of rights letter dated June 10, 2016	522-524
O	Exhibit "O" – Letter from S. Babe to Forever Jewellery Inc. dated June 21, 2016	525-528
7.	Consent of Richter Advisory Group Inc. to act as interim receiver and receiver	529-530

EXHIBIT “E”

Attached is Exhibit "E" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



GUARANTEE AGREEMENT

GUARANTEE AGREEMENT (this "Guarantee"), dated as of July 18, 2013, by Forever Jewellery Inc., an Ontario company with its principal place of business at 64 Jardin Drive, Unit 4, Concord, Ontario L4K 3P3 (the "Guarantor") in favor of (a) SALUS CAPITAL PARTNERS, LLC, as administrative agent and collateral agent (in such capacities, the "Agent") for its own benefit and the benefit of the other Credit Parties (as defined in the Credit Agreement referred to below), and (b) the other Credit Parties.

WITNESSETH

WHEREAS, reference is made to that certain Credit Agreement dated as of the date hereof (as amended, modified, supplemented or restated hereafter, the "Credit Agreement"), by and between, among others, (i) J.S.N. Jewellery Inc., a Canadian corporation (the "Lead Borrower"), (ii) the other Borrowers party thereto from time to time, (iii) the Agent, and (iv) the Lenders party thereto from time to time (the "Lenders"). Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, the Lenders have agreed to make Loans to the Borrowers pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement.

WHEREAS, the Guarantor acknowledges that it will receive direct and indirect benefits from the availability of the credit facility provided for in the Credit Agreement, from the making of the Loans by the Lenders.

WHEREAS, the obligations of the Lenders to make Loans are each conditioned upon, among other things, the execution and delivery by the Guarantor of a guarantee in the form hereof. As consideration therefor, and in order to induce the Lenders to make Loans, the Guarantor are willing to execute this Guarantee.

Accordingly, the Guarantor hereby agrees as follows:

SECTION 1. Guarantee. The Guarantor irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, the due and punctual payment when due (whether at the stated maturity, by required prepayment, by acceleration or otherwise) and performance by the Borrowers of each and all of their Obligations under the Credit Agreement and other Loan Documents, including, without limitation, the principal amount of the Obligations, all interest and fees thereon and any other Obligations related thereto (collectively, the "Guaranteed Obligations"); **provided however**, that the recourse of the Agent and the Lenders against the Guarantor under this sentence shall be limited to an amount not exceeding the sum of all amounts due and payable (or, with the passage of time, as may become due and payable) (including without limitation, any Indebtedness or Accounts) by the Guarantor to the Lead Borrower or any other Loan Party from time to time (the "Sums Owed"). The Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon this Guarantee notwithstanding any extension or renewal of any Guaranteed Obligation.

SECTION 2. Demand by Agent; Limitation. Upon failure by the Borrowers punctually to pay any Guaranteed Obligation when due, or upon the occurrence of any other Event of Default under the Credit Agreement, the Agent may make demand upon the Guarantor for the payment of such Guaranteed Obligation and the Guarantor binds and obliges itself to make such payment forthwith upon such demand. All obligations of the Guarantor shall be payable or performable forthwith upon

demand by the Agent, and any which are not so paid shall bear interest from the date of such demand at the rate or rates applicable to the corresponding Guaranteed Obligations.

SECTION 3. Guaranteed Obligations Not Affected. To the fullest extent permitted by applicable Law, the Guarantor waives presentment to, demand of payment from, and protest to, any Loan Party of any of the Guaranteed Obligations, and also waives notice of acceptance of this Guarantee, notice of protest for nonpayment and all other notices of any kind (except as expressly set forth in SECTION 2 above). To the fullest extent permitted by applicable Law, the obligations of the Guarantor hereunder shall not be affected by (a) the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any Loan Party under the provisions of the Credit Agreement, any other Loan Document or otherwise or against any other party with respect to any of the Guaranteed Obligations, (b) any rescission, waiver, amendment or modification of, or any release from, any of the terms or provisions of this Guarantee, any other Loan Document or any other agreement, with respect to any Loan Party or with respect to the Guaranteed Obligations, (c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Agent or any other Credit Party, or (d) the lack of legal existence of any Loan Party or legal obligation to discharge any of the Guaranteed Obligations by any Loan Party for any reason whatsoever, including, without limitation, in any insolvency, bankruptcy or reorganization of any Loan Party.

SECTION 4. Security. The Guarantor hereby acknowledges and agrees that the Agent and each of the other Credit Parties may (a) take and hold security for the payment of this Guarantee and the Guaranteed Obligations and exchange, enforce, waive and release any such security, (b) apply such security and direct the order or manner of sale thereof as they in their sole discretion may determine, and (c) release or substitute any one or more endorsees, the Borrowers, other Guarantor or other obligors, in each case without affecting or impairing in any way the liability of the Guarantor hereunder.

SECTION 5. Guarantee of Payment. The Guarantor further agrees that this Guarantee constitutes a guarantee of payment and performance when due of all Guaranteed Obligations and not of collection and, to the fullest extent permitted by applicable Law, waives any right to require that any resort be had by the Agent or any other Credit Party to any of the Collateral or other security held for payment of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of the Agent or any other Credit Party in favor of any Loan Party or any other Person or to any other guarantor of all or part of the Guaranteed Obligations. Any payment required to be made by the Guarantor hereunder may be required by any Agent or any other Credit Party on any number of occasions and shall be payable to the Agent, for the benefit of the Agent and the other Credit Parties, in the manner provided in the Credit Agreement.

SECTION 6. Indemnification. The Guarantor shall indemnify the Credit Parties and each of their Subsidiaries and Affiliates, and each of their respective stockholders, directors, officers, employees, agents, attorneys, and advisors (each such Person being called an "Indemnitee"), against, and hold each Indemnitee harmless from, any and all damages, actual out-of-pocket losses, claims, actions, causes of action, settlement payments, obligations, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred, suffered, sustained or required to be paid by, or asserted against, any Indemnitee arising out of, in any way connected with, or as a result of, (i) the execution or delivery of this Guarantee, the Credit Agreement or any other Loan Document or any other agreement or instrument contemplated hereby, the performance by the Guarantor of their respective obligations thereunder, or the consummation of the transactions contemplated by the Credit Agreement and the other Loan Documents or any other transactions contemplated hereby or thereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to or arising from any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any

Indemnatee is a party thereto; provided, however, such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by a Borrower, any other Loan Party or any other guarantor against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Borrowers, such Loan Party or the Guarantor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. In connection with any indemnified claim hereunder, the Indemnatee shall be entitled to select its own counsel and the Guarantor shall promptly pay the reasonable fees and expenses of such counsel.

SECTION 7. Guarantee Absolute. Without limiting the generality of SECTION 3, the obligations of the Guarantor hereunder shall remain fully effective and enforceable against the Guarantor and shall not be released, exonerated, discharged, diminished, subjected to defence, limited or in any way affected by, and the rights and remedies of the Agent under this Agreement shall not in any way be diminished or prejudiced by, and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable Law:

(a) any lack of genuineness, legality, validity or enforceability of any of the Guaranteed Obligations or of any agreement or arrangement between any Borrower, or any other Person, and any one or more of the Credit Parties, or any failure by any Borrower or any other Person, to carry out any of its obligations under any such agreement or arrangement;

(b) any change in the existence, name, objects, business, powers, organization, share capital, organizational documents, ownership, control, directors or management of any Borrower, the Guarantor or any surety, the reorganization of any Borrower, the Guarantor or any surety, any amalgamation or merger by the Borrower, the Guarantor or any surety with any other Person or Persons, or any continuation of the Borrower, the Guarantor, or any surety under the laws of any jurisdiction;

(c) any change in the nature of or cessation of the duties performed by the Guarantor for or on behalf of any Loan Party;

(d) any lack or limitation of power, incapacity or disability of any Borrower, the Guarantor or any surety or of the directors, officers, managers, employees or agents of any Borrower, the Guarantor or any surety or any other irregularity, defect or informality, or any fraud, by any Borrower, the Guarantor or any surety or any of their respective directors, officers, managers, employees or agents, with respect to any or all of the Guaranteed Obligations, any or all of the obligations of the Guarantor hereunder or any or all of the liabilities and obligations of any surety;

(e) any non-compliance with or contravention by the Guarantor of any provision of any corporate statute applicable to the Guarantor relative to guarantees or other financial assistance given by the Guarantor;

(f) any impossibility, impracticability, frustration of purpose, force majeure or act of Governmental Authority with respect to the performance of any of the Guaranteed Obligations or Guarantor Liabilities;

(g) any bankruptcy or insolvency proceeding affecting, or the financial condition of, any Borrower, the Guarantor, any surety, any Credit Party or any other Person at any time;

(h) might otherwise be a defence available to, or a discharge of, any Borrower, the Guarantor or any surety in respect of any or all of the Guaranteed Obligations, any or all of the obligations of the Guarantor hereunder or any or all of the liabilities and obligations of any surety;

(i) any loss of, or in respect of, any security by or on behalf of any Credit Party from any Borrower, the Guarantor, any surety or any other Person, whether occasioned through the fault of any Credit Party or otherwise;

(j) any loss or impairment of any right of the Guarantor for subrogation, reimbursement or contribution, whether or not as a result of any action taken or omitted to be taken by any Credit Party; or

(k) any other matter, act, omission, circumstance, development or thing of any and every nature, kind and description whatsoever, whether similar or dissimilar to the foregoing (other than the due payment and performance in full of the Guaranteed Obligations) that might in any manner (but for the operation of this provision) operate (whether by statute, at law, in equity or otherwise) to release, discharge, diminish, limit, restrict or in any way affect the liability of, or otherwise provide a defence to, a guarantor, a surety, or a principal debtor, even if known by the Agent or any one or more of the other Credit Parties.

SECTION 8. Dealing with Borrower Liabilities. Without limiting SECTION 7, the obligations of the Guarantor hereunder shall remain fully effective and enforceable against the Guarantor and shall not be released, exonerated, discharged, diminished, subjected to defence, limited or in any way affected by, and the rights and remedies of the Agent and the other Credit Parties under this Agreement shall not in any way be diminished or prejudiced by, and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable Law:

(a) any amendment, alteration, novation or variation in any manner and to any extent (and irrespective of the effect of the same on the Guarantor) of any of the Guaranteed Obligations, any of the liabilities and obligations of any surety, any Security or any one or more of the Credit Parties' arrangements or agreements with the Borrower, any surety or any other Person;

(b) any limitation, compromise, subordination, postponement or abandonment of any of the Guaranteed Obligations, any of the obligations of the Guarantor hereunder, any of the liabilities and obligations of any surety, any Security or any one or more of the Credit Parties' arrangements or agreements with any Borrower, any surety or any other Person;

(c) any grant of time, renewal, extension, indulgence, release, discharge or other course of conduct by any one or more Credit Parties to the Borrower, any surety or any other Person;

(d) the creation of any new or additional Guaranteed Obligations, the increase or reduction of the rate of interest on any or all of the Guaranteed Obligations or any other rates or fees payable under or in respect of any or all of the Guaranteed Obligations;

(e) any alteration, settlement, compromise, acceleration, extension or change in the time or manner for payment or performance by any Borrower made or permitted by any one or more Credit Parties of, or by any other Person or Persons liable to any one or more of the Credit Parties with respect to, any or all of the Guaranteed Obligations;

(f) the Credit Parties or any of them taking or abstaining from taking security from the Borrower, the Guarantor, any surety or any other Person or abstaining from completing, perfecting or maintaining the perfection of any Collateral;

(g) the Credit Parties or any of them releasing, substituting or adding one or more sureties or endorsers, accepting additional or substituted Security, or releasing, subordinating or postponing any Collateral;

(h) the Credit Parties or any of them accepting compromises from any Borrower, any surety or any other Person;

(i) the creation or addition of any new Loan Documents, or the addition of any new Credit Parties pursuant to the provisions of any Loan Documents;

(j) the Credit Parties or any of them doing, or omitting to do, anything to enforce the payment or performance of any or all of the Guaranteed Obligations, any or all of the liabilities and obligations of any surety or any Security Document;

(k) the Credit Parties or any of them giving or refusing to give or continuing to give any credit or any financial accommodation to any Borrower or to any other Person;

(l) the Credit Parties or any of them proving any claim in any insolvency proceeding affecting any Borrower, the Guarantor, any surety or any other Person as they see fit or refraining from proving any claim or permitting or suffering the impairment of any of the Guaranteed Obligations in any such insolvency proceeding; making any election in any such insolvency proceeding; permitting or suffering the creation of secured or unsecured credit or debt in any such insolvency proceeding; or permitting or suffering the disallowance, avoidance, or subordination of any of the Guaranteed Obligations or the obligations of any other debtor with respect to the Guaranteed Obligations in any such insolvency proceeding;

(m) the Credit Parties or any of them applying any money received from the Borrower, the Guarantor, any surety, any other Person or from the Collateral upon such part of the Guaranteed Obligations as the Credit Parties or any of them may see fit or changing any such application in whole or in part from time to time as the Credit Parties or any of them may see fit; or

(n) the Credit Parties or any of them otherwise dealing with any Borrower, the Guarantor, any surety, any other Person, the Guaranteed Obligations, the liabilities and obligations of any sureties, and all Collateral as the Credit Parties or any of them may see fit.

SECTION 9. Settlement of Accounts. Any account settled or stated between the Agent or any other Credit Party and any Borrower shall be accepted by the Guarantor as *prima facie* evidence that the amount thereby appearing due by any Borrower to the Agent or such other Credit Party is so due.

SECTION 10. Payment Indemnity. If any or all of the Guaranteed Obligations are not duly paid or performed by any Borrower and are not paid or performed by the Guarantor under SECTION 2 for any reason whatsoever, the Guarantor shall, as a separate and distinct obligation, indemnify and save each of the Credit Parties harmless from and against all losses, costs, damages, expenses, claims and liabilities that each such Credit Party may suffer or incur in connection with or in respect of any failure by the Borrowers for any reason to pay or perform any of the Guaranteed Obligations, and shall pay all such amounts to the Agent after demand as herein provided up to an amount not exceeding the Sums Owed.

SECTION 11. Guarantor Liable as Principal Borrower. If, and to the extent that, any amount in respect of the Guaranteed Obligations is not recoverable from the Guarantor under this Agreement on the basis of a guarantee or the Credit Parties are not indemnified under SECTION 10, in each case, for any reason whatsoever, then, notwithstanding any other provision of this

Agreement, the Guarantor shall be liable under this Agreement as principal obligor in respect of the due payment of such amount and shall pay such amount to the Agent after demand as herein provided up to an amount not exceeding the Sums Owed.

SECTION 12. Stay of Acceleration. If acceleration of the time for payment, or the liability of any Borrower to make payment, of any amount specified to be payable by any Borrower in respect of the Guaranteed Obligations is stayed, prohibited or otherwise affected upon any insolvency proceeding or other event affecting any Borrower or payment of any of the Guaranteed Obligations by any Borrower, all such amounts otherwise subject to acceleration or payment shall nonetheless be deemed for all purposes of this Agreement to be and to have become due and payable by the Borrowers and shall be payable by the Guarantor under this Agreement immediately forthwith on demand by the Agent.

SECTION 13. Borrower Information. The Guarantor acknowledges and agrees that the Guarantor has not executed this Agreement as a result of, by reason of, or in reliance upon, any promise, representation, statement or information of any kind or nature whatsoever given, or offered to the Guarantor, by or on behalf of the Credit Parties or any other Person whether in answer to any enquiry by or on behalf of the Guarantor or not and the Credit Parties were not prior to the execution by the Guarantor of this Agreement, and are not thereafter, under any duty to disclose to the Guarantor or any other Person any information, matter or thing (material or otherwise) relating to any Borrower, its affairs or its transactions with the Credit Parties, including any information, matter or thing which puts or may put any Borrower in a position which the Guarantor would not naturally expect or any unexpected facts or unusual features which, whether known or unknown to the Guarantor, are present in any transaction between the Borrower and the Credit Parties, and the Credit Parties were not and are not under any duty to do or execute any matter, thing or document relating to any Borrower, its affairs or its transactions with the Credit Parties. The Guarantor acknowledges and confirms that it has established its own adequate means of obtaining from any Borrower on a continuing basis all information desired by the Guarantor concerning the financial condition of any Borrower and that the Guarantor will look to the Borrowers, and not to the Agent or any other Credit Party, in order for the Guarantor to keep adequately informed of changes in any Borrower's financial condition.

SECTION 14. Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the Agent or any other Credit Party has at law or in equity against the Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Agent or such other Credit Party as designated thereby in cash the amount of such unpaid Guaranteed Obligations. Upon payment by the Guarantor of any sums to the Agent or any other Credit Party as provided above, all rights of the Guarantor against any Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Guaranteed Obligations. In addition, any indebtedness of the Borrowers or any other Loan Party or any other Guarantor now or hereafter held by the Guarantor is hereby subordinated in right of payment to the prior indefeasible payment in full in cash of all of the Guaranteed Obligations. After the occurrence and during the continuance of an Event of Default, the Guarantor will not demand, sue for, or otherwise attempt to collect any such indebtedness until the indefeasible payment in full in cash of the Guaranteed Obligations, termination or expiration of the Commitments. If any amount shall erroneously be paid to the Guarantor on account of (a) such subrogation, contribution, reimbursement, indemnity or similar right or (b) any such indebtedness, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement.

SECTION 15. Limitation on Guarantee of Guaranteed Obligations. In any action or proceeding with respect to the Guarantor involving any corporate law or any applicable bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of the Guarantor under SECTION 1 hereof would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under said SECTION 1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by the Guarantor, any Credit Party, the Agent or any other Person, be automatically limited and reduced to the highest amount which is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 16. Information. The Guarantor assumes all responsibility for being and keeping itself informed of each Loan Party's and each other Guarantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that none of the Agent or the other Credit Parties will have any duty to advise any of the Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 17. Termination. This Guarantee (a) shall terminate when (i) the Commitments shall have expired or been terminated, and the principal of and interest on each Loan and all fees and other Guaranteed Obligations shall have been paid in full, or (ii) a payment by Guarantor to Agent of an amount equal to the Sums Owed has been made following a demand by Agent pursuant to the terms of SECTION 2 of this Guarantee (the "Payment") and (b) shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation or the Payment is rescinded or must otherwise be restored by any Credit Party or the Guarantor upon the bankruptcy or reorganization of any Loan Party or any other Guarantor or otherwise.

SECTION 18. Costs of Enforcement. Without duplication of any fees or expenses provided for under the Credit Agreement or the other Loan Documents, the Guarantor agrees to pay on demand all Credit Party Expenses in connection with (i) the administration, negotiation, documentation or amendment of this Guarantee, and (ii) the Agent's or any other Credit Party's efforts to collect and/or to enforce any of the Guaranteed Obligations of the Guarantor hereunder and/or to enforce any of the rights, remedies, or powers of the Agent or any other Credit Party against or in respect of the Guarantor (whether or not suit is instituted by or against the Agent or any other Credit Party).

SECTION 19. Assignments. This Guarantee shall inure to the benefit of the Agent and the other Credit Parties, and their respective successors and assigns. The Guarantor shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such attempted assignment or transfer shall be void), except as expressly permitted by this Guarantee or the Credit Agreement.

SECTION 20. Waivers; Amendment.

(a) The rights, remedies, powers, privileges, and discretion of the Agent hereunder and under applicable Law (herein, the "Agent's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Agents in exercising or enforcing any of the Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Agent of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Agent and any

Person, at any time, shall preclude the other or further exercise of the Agent's Rights and Remedies. No waiver by the Agent of any of the Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Agent's Rights and Remedies may be exercised at such time or times and in such order of preference as the Agent may determine. The Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Guaranteed Obligations. No waiver of any provisions of this Guarantee or any other Loan Document or consent to any departure by the Guarantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case shall entitle the Guarantor or any other Guarantor to any other or further notice or demand in the same, similar or other circumstances.

(b) Neither this Guarantee nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Agent and the Guarantor, subject to any consent required in accordance with SECTION 10.01 of the Credit Agreement.

SECTION 21. Copies and Facsimiles. This instrument and all documents which have been or may be hereinafter furnished by the Guarantor to the Agent may be reproduced by the Agent by any photographic, microfilm, xerographic, digital imaging, or other process. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). Any facsimile or other electronic transmission which bears proof of transmission shall be binding on the party which or on whose behalf such transmission was initiated and likewise so admissible in evidence as if the original of such facsimile or other electronic transmission had been delivered to the party which or on whose behalf such transmission was received.

SECTION 22. Foreign Currency Guarantor Liabilities. The Guarantor shall make payment relative to any Guaranteed Obligations in the currency (the "Original Currency") in which the Borrower is required to pay such Guaranteed Obligations. If the Guarantor makes payment relative to any Guaranteed Obligations in a currency (the "Other Currency") other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment shall constitute a discharge of the Guarantor Liabilities only to the extent of the amount of the Original Currency which the Agent is able to purchase with the amount it receives on the date of receipt. If the amount of the Original Currency which the Agent is able to purchase is less than the amount of such currency originally due to it in respect to the relevant Guaranteed Obligations, the Guarantor shall indemnify and save the Agent and the other Credit Parties harmless from and against any loss or damage arising as a result of such deficiency. This indemnity constitutes an obligation separate and independent from the other obligations contained in this Agreement, gives rise to a separate and independent cause of action, applies irrespective of any indulgence granted by the Agent or any other Credit Party and continues in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.

SECTION 23. Taxes and Set-Off. All payments to be made by the Guarantor hereunder shall be made without set off, compensation, deduction or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever. If at any time any applicable Law requires the Guarantor to make any such deduction or withholding from any such payment, the sum due from the Guarantor with respect to such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent receives a net sum equal to the sum which it would have received had no deduction or withholding been required.

SECTION 24. Time. Time is of the essence with respect to this Agreement and the time for performance of the obligations of the Guarantor under this Agreement may be strictly enforced by the Agent. The limitation period applicable to any proceeding relating to a claim under, in connection with, or with respect to this Agreement shall be solely as prescribed in sections 15-17 of the *Limitations Act, 2002* (Ontario), and any other limitation period in respect of such claim (including that provided for in section 4 of the *Limitations Act, 2002* (Ontario)) is extended accordingly.

SECTION 25. Governing Law. THIS GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

SECTION 26. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in SECTION 10.02 of the Credit Agreement, provided that communications and notices to the Guarantor may be delivered to the Lead Borrower on behalf of the Guarantor.

SECTION 27. Survival of Agreement; Severability.

(a) All covenants, agreements, indemnities, representations and warranties made by the Guarantor herein and in the certificates or other instruments delivered in connection with or pursuant to this Guarantee, the Credit Agreement or any other Loan Document shall be considered to have been relied upon by the Agent and the other Credit Parties and shall survive the execution and delivery of this Guarantee, the Credit Agreement and the other Loan Documents and the making of any Loans by the Lenders, regardless of any investigation made by the Agent or any other Credit Party or on their behalf and notwithstanding that the or other Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended, and shall continue in full force and effect until terminated as provided in SECTION 17 hereof. The provisions of SECTION 6 and SECTION 18 hereof shall survive and remain in full force and effect regardless of the repayment of the Guaranteed Obligations, the expiration or termination of the Commitments or the termination of this Guarantee or any provision hereof.

(b) Any provision of this Guarantee held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 28. Counterparts. This Guarantee may be executed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Guarantee by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Guarantee.

SECTION 29. Rules of Interpretation. The rules of interpretation specified in SECTIONS 1.02 through 1.05 of the Credit Agreement shall be applicable to this Guarantee.

SECTION 30. Jurisdiction; Consent to Service of Process.

(a) The Guarantor agrees that any suit for the enforcement of this Guarantee or any other Loan Document may be brought in the courts of the Province of Ontario, as the Agent may elect in its sole discretion, and consents to the non-exclusive jurisdiction of such courts. Each party to this Guarantee hereby waives any objection which it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum and agrees that

a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Guarantee shall affect any right that the Agent or any other Credit Party may otherwise have to bring any action or proceeding relating to this Guarantee against a Guarantor or its properties in the courts of any jurisdiction.

(b) The Guarantor agrees that any action commenced by the Guarantor asserting any claim or counterclaim arising under or in connection with this Guarantee or any other Loan Document shall be brought solely in a court of the Province of Ontario, as the Agent may elect in its sole discretion, and consents to the exclusive jurisdiction of such courts with respect to any such action.

(c) Each party to this Guarantee irrevocably consents to service of process in the manner provided for notices in SECTION 26. Nothing in this Guarantee or any other Loan Document will affect the right of any party to this Guarantee to serve process in any other manner permitted by law.

SECTION 31. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTEE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND WAIVES THE RIGHT TO ASSERT ANY SETOFF, COUNTERCLAIM OR CROSS-CLAIM IN RESPECT OF, AND ALL STATUTES OF LIMITATIONS WHICH MAY BE RELEVANT TO, SUCH ACTION OR PROCEEDING; AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (B) ACKNOWLEDGES THAT THE AGENT AND THE OTHER CREDIT PARTIES HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 31.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has duly executed this Guarantee as of the day and year first above written.

GUARANTOR:

FOREVER JEWELLERY INC.



Accepted:

SALUS CAPITAL PARTNERS, LLC, as Agent

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Guarantor has duly executed this Guarantee as of the day and year first above written.

GUARANTOR:

FOREVER JEWELLERY INC.

Accepted:

SALUS CAPITAL PARTNERS, LLC, as Agent

By: 

Name: James P. L. McCarty

Title: Senior Vice President

EXHIBIT “F”

Attached is Exhibit "F" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



CANADIAN GENERAL SECURITY AGREEMENT

by

J.S.N. JEWELLERY INC.

as Lead Borrower

and

THE OTHER LOAN PARTIES PARTY HERETO
FROM TIME TO TIME

and

SALUS CAPITAL PARTNERS, LLC
as Collateral Agent

Dated as of July 18, 2013

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND INTERPRETATION.....	1
SECTION 1.1 Definitions.....	1
SECTION 1.2 Interpretation.....	5
SECTION 1.3 Perfection Certificate.....	5
ARTICLE II GRANT OF SECURITY AND SECURED OBLIGATIONS.....	6
SECTION 2.1 Pledge; Grant of Security Interest.....	6
SECTION 2.2 Secured Obligations.....	7
SECTION 2.3 Security Interest.....	7
ARTICLE III PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF COLLATERAL.....	7
SECTION 3.1 Delivery of Certificated Securities Collateral.....	7
SECTION 3.2 Perfection of Uncertificated Securities Collateral.....	8
SECTION 3.3 Financing Statements and Other Filings; Maintenance of Perfected Security Interest.....	8
SECTION 3.4 Other Actions.....	9
SECTION 3.5 Supplements; Further Assurances.....	12
SECTION 3.6 Joinder of Additional Grantors.....	12
ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS.....	12
SECTION 4.1 Limitation on Liens; Defense of Claims; Transferability of Collateral.....	12
SECTION 4.2 Chief Executive Office; Change of Name; Jurisdiction of Organization.....	13
SECTION 4.3 Location of Inventory and Equipment.....	13
SECTION 4.4 Condition and Maintenance of Equipment.....	13
SECTION 4.5 Due Authorization and Issuance.....	13
SECTION 4.6 No Conflicts, Consents, etc.....	14
SECTION 4.7 Collateral.....	14
SECTION 4.8 Insurance.....	14
SECTION 4.9 Payment of Taxes; Compliance with Laws; Contested Liens; Claims.....	14
SECTION 4.10 Access to Collateral, Books and Records; Other Information.....	14
ARTICLE V CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL.....	15
SECTION 5.1 Pledge of Additional Securities Collateral.....	15
SECTION 5.2 Voting Rights; Distributions; etc.....	15
SECTION 5.3 Organization Documents.....	16
SECTION 5.4 Defaults, Etc.....	16

Page

SECTION 5.5	Certain Agreements of Grantors As Issuers and Holders of Equity Interests.	16
ARTICLE VI CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL.....		
SECTION 6.1	Grant of License.	17
SECTION 6.2	Registrations.	17
SECTION 6.3	No Violations or Proceedings.....	17
SECTION 6.4	Protection of Collateral Agent's Security.....	17
SECTION 6.5	After-Acquired Property.....	18
SECTION 6.6	Modifications.....	18
SECTION 6.7	Litigation.	18
SECTION 6.8	Third Party Consents.	19
ARTICLE VII CERTAIN PROVISIONS CONCERNING ACCOUNTS.....		
SECTION 7.1	Special Representations and Warranties.....	19
SECTION 7.2	Maintenance of Records.	19
SECTION 7.3	Legend.	20
SECTION 7.4	Modification of Terms, Etc.	20
SECTION 7.5	Collection.	20
ARTICLE VIII REMEDIES.....		
SECTION 8.1	Remedies.	20
SECTION 8.2	Notice of Sale.	22
SECTION 8.3	Waiver of Notice and Claims.	23
SECTION 8.4	Sales of Collateral.....	23
SECTION 8.5	No Waiver; Cumulative Remedies.....	24
SECTION 8.6	Certain Additional Actions Regarding Intellectual Property.....	25
SECTION 8.7	Application of Proceeds.....	25
ARTICLE IX MISCELLANEOUS.....		
SECTION 9.1	Concerning Collateral Agent.	25
SECTION 9.2	Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact.	26
SECTION 9.3	Expenses.	27
SECTION 9.4	Continuing Security Interest; Assignment.....	27
SECTION 9.5	Termination; Release.....	27
SECTION 9.6	Modification in Writing.....	28
SECTION 9.7	Notices.....	28
SECTION 9.8	GOVERNING LAW.	28
SECTION 9.9	CONSENT TO JURISDICTION; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.....	28

	<u>Page</u>
SECTION 9.10 Severability of Provisions.....	29
SECTION 9.11 Execution in Counterparts; Effectiveness.....	29
SECTION 9.12 No Release.....	29
SECTION 9.13 Obligations Absolute.	30

SIGNATURES

EXHIBIT 1	Form of Securities Pledge Amendment
SCHEDULE I	Intercompany Notes
SCHEDULE II	Filings, Registrations and Recordings
SCHEDULE III	Securities Collateral

GENERAL SECURITY AGREEMENT

GENERAL SECURITY AGREEMENT dated as of July 18, 2013 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Security Agreement") made by (i) J.S.N. JEWELLERY INC., a Canadian company having an office at 64 Jardin Drive, Unit 7, Concord, Ontario L4K 3P3, as lead borrower for itself and the other Borrowers (the "Lead Borrower") and (ii) EACH OF THE OTHER ENTITIES LISTED ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT, as pledgors, assignors and debtors (together with the Lead Borrower, in such capacities and together with any successors in such capacities, the "Grantors," and each, a "Grantor"), in favour of SALUS CAPITAL PARTNERS, LLC, having an office at 197 First Avenue, Suite 250, Needham, MA 02494, in its capacity as collateral agent for the Credit Parties (as defined in the Credit Agreement defined below) pursuant to the Credit Agreement, as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent").

R E C I T A L S :

A. The Lead Borrower, the Collateral Agent, Salus Capital Partners, LLC, as Administrative Agent, and the Lenders party thereto, among others, have, in connection with the execution and delivery of this Security Agreement, entered into that certain Credit Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

B. Each Grantor will receive substantial benefits from the execution, delivery and performance of the Credit Agreement and each is, therefore, willing to enter into this Security Agreement.

C. This Security Agreement is given by each Grantor in favour of the Collateral Agent for the benefit of the Credit Parties to secure the payment and performance of all of the Secured Obligations (as hereinafter defined).

D. It is a condition to the obligations of the Lenders to make the Loans under the Credit Agreement and a condition to the L/C Issuer issuing Letters of Credit under the Credit Agreement that each Grantor execute and deliver the applicable Loan Documents, including this Security Agreement.

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor and the Collateral Agent hereby agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions.

(a) "Account", "Chattel Paper", "Certificated Security", "Consumer Goods", "Document of Title", "Equipment", "Futures Account", "Futures Contract", "Futures Intermediary", "Goods", "Instrument", "Intangible", "Inventory", "Investment Property", "Money", "Proceeds", "Securities Account", "Securities Intermediary", "Security", "Security"

Certificate", Security Entitlement", and Uncertificated Security" have the meanings given to them in the PPSA.

(b) Capitalized terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement.

(c) The following terms shall have the following meanings:

"Claims" shall mean any and all property taxes and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including, without limitation, landlords', carriers', mechanics', workmen's, repairmen's, labourers', materialmen's, suppliers' and warehousemen's Liens and other claims arising by operation of law) against, all or any portion of the Collateral.

"Collateral" shall have the meaning assigned to such term in SECTION 2.1 hereof.

"Collateral Agent" shall have the meaning assigned to such term in the Preamble hereof.

"Contracts" shall mean, collectively, with respect to each Grantor, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Grantor and any other party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

"Control" has the meaning assigned to such term in the STA.

"Control Agreements" shall mean, collectively, the Blocked Account Agreements and the Securities Account Control Agreements.

"Copyrights" shall mean, collectively, with respect to each Grantor, all copyrights (whether statutory or common Law, whether established or registered in Canada or any other country or any political subdivision thereof whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Grantor, in each case, whether now owned or hereafter created or acquired by or assigned to such Grantor, including, without limitation, the registrations and applications listed in Section III of the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Law with respect to such Grantor's use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

"Credit Agreement" shall have the meaning assigned to such term in Recital A hereof.

"Distributions" shall mean, collectively, with respect to each Grantor, all Restricted Payments from time to time received, receivable or otherwise distributed to such Grantor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

"Excluded Property" shall mean the following:

(a) any license or permit held by any Grantor (i) that validly prohibits the creation by such Grantor of a security interest therein or thereon or (ii) to the extent that applicable Law prohibits the creation of a security interest therein or thereon;

(b) any Intellectual Property Collateral, for which the creation by a Grantor of a security interest therein is prohibited by the terms thereof or by applicable Law;

(c) Consumer Goods; and

(d) the last day of the term of any lease or agreement for lease of real property,

provided, however, that in each case described in clauses (a) and (b) of this definition, such property shall constitute "Excluded Property" only to the extent and for so long as such license, permit, or applicable Law validly prohibits the creation of a Lien on such property in favour of the Collateral Agent and, upon the termination of such prohibition (howsoever occurring), such property shall cease to constitute "Excluded Property"; provided further, that "Excluded Property" shall not include (i) the right to receive any proceeds arising therefrom or any Proceeds, substitutions or replacements of any Excluded Property.

"Goodwill" shall mean, collectively, with respect to each Grantor, the goodwill connected with such Grantor's business including, without limitation, (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property Collateral in which such Grantor has any interest, (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Grantor's business.

"Grantor" shall have the meaning assigned to such term in the Preamble hereof.

"Guaranteed Obligations" shall have the meaning assigned to such term in any Facility Guarantee.

"Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Licenses and Goodwill.

"Intercompany Notes" shall mean, with respect to each Grantor, all intercompany notes described on Schedule I hereto and each intercompany note hereafter acquired by such Grantor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

"Issuer" shall have the meaning assigned to such term in the STA.

"Lead Borrower" shall have the meaning assigned to such term in the Preamble hereof.

"Licenses" shall mean, collectively, with respect to each Grantor, all license and distribution agreements with any other Person with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Grantor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals,

extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright.

"Patents" shall mean, collectively, with respect to each Grantor, all patents issued or assigned to and all patent applications made by such Grantor (whether established or registered or recorded in Canada or any other country or any political subdivision thereof), including, without limitation, those patents and patent applications listed in Section III of the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Law with respect to such Grantor's use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

"Perfection Certificate" shall mean that certain perfection certificate dated as of the date hereof, executed and delivered by each Grantor in favour of the Collateral Agent for the benefit of the Credit Parties, and each other Perfection Certificate (which shall be in form and substance reasonably acceptable to the Collateral Agent) executed and delivered by the applicable Grantor in favour of the Collateral Agent for the benefit of the Credit Parties contemporaneously with the execution and delivery of a joinder agreement executed in accordance with SECTION 3.6 hereof, in each case, as the same may be amended, amended and restated, restated, supplemented or otherwise modified from time to time in accordance with the Credit Agreement.

"Permits" means, with respect to any Grantor, all permits, licences, waivers, exemptions, consents, certificates, authorizations, approvals, franchises, rights-of-way, easements and entitlements that such Grantor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business.

"Pledged Issuer" means, with respect to any Grantor at any time, any Person which is an Issuer of, or with respect to, any Pledged Securities of such Grantor at such time.

"Pledged Securities" means, with respect to any Grantor, any and all Collateral of such Grantor that is a Security.

"PPSA" means the Personal Property Security Act of the Province referred to in the "Governing Law" section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

"Receiver" means a receiver, a manager or a receiver and manager.

"Secured Obligations" shall mean the Obligations (as defined in the Credit Agreement) and the Guaranteed Obligations.

"Securities Account Control Agreement" shall mean an agreement in form and substance satisfactory to the Collateral Agent with respect to any Securities Account of a Grantor.

"Securities Collateral" shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

"Securities Laws" means the securities legislation of the Province referred to in the "Governing Law" section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

"Security Agreement" shall have the meaning assigned to such in the Preamble hereof.

"STA" means the Securities Transfer Act of the Province referred to in the "Governing Law" section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

"Successor Interests" shall mean, collectively, with respect to each Grantor, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other entity owned by such Grantor (unless such successor is such Grantor itself) formed by or resulting from any consolidation or merger in which any Person listed in Section I of the Perfection Certificate is not the surviving entity.

"Trademarks" shall mean, collectively, with respect to each Grantor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URLs), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Grantor and all registrations and applications for the foregoing (whether statutory or common Law and whether established or registered in Canada or any other country or any political subdivision thereof), including, without limitation, the registrations and applications listed in Section III of the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Law with respect to such Grantor's use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

"ULC" means an Issuer that is an unlimited company, unlimited liability corporation or unlimited liability company.

"ULC Laws" means the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future Applicable Laws governing ULCs.

"ULC Shares" means shares or other equity interests in the capital stock of a ULC.

SECTION 1.2 Interpretation. The rules of interpretation specified in Article I of the Credit Agreement shall be applicable to this Security Agreement.

SECTION 1.3 Perfection Certificate. The Collateral Agent and each Grantor agree that the Perfection Certificate, and all schedules, amendments and supplements thereto, are and shall at all times remain a part of this Security Agreement.

ARTICLE II
GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1 Pledge; Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, each Grantor hereby pledges, grants, charges, mortgages and assigns (by way of security) to the Collateral Agent for its benefit and for the benefit of the other Credit Parties, a lien on and security interest in and to all of the right, title and interest of such Grantor in, to and under all undertaking, personal property and interests in such personal property, whether owned, licensed, possessed, leased or otherwise held by such Grantor, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, the "Collateral"), including, without limitation:

- (a) all Accounts;
- (b) all Goods, including Equipment and Inventory;
- (c) all Document of Title, Instruments and Chattel Paper;
- (d) all Contracts;
- (e) all Intangibles;
- (f) all Securities Collateral;
- (g) all Investment Property;
- (h) all Intellectual Property Collateral;
- (i) all fixtures;
- (j) all Permits;
- (k) all Money;
- (l) all books, files, records, papers, documents, disks and other repositories of data recording in any form, evidence or relating to the Collateral; and
- (m) to the extent not covered by clauses (a) through (l) of this sentence, all other personal property of such Grantor, whether tangible or intangible and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (a) through (m) above, the security interest created by this Security Agreement shall not extend to, and the term "Collateral" shall not include, any Excluded Property and the Grantors shall from time to time at the request of the Collateral Agent give written notice to the Collateral Agent identifying in reasonable detail the Excluded Property and shall provide to the Collateral Agent such other information regarding the Excluded Property as the Collateral Agent may reasonably request; provided, however, that if and when any

property shall cease to be Excluded Property, a Lien on a security in such property shall be deemed granted therein. Each Grantor hereby represents and warrants that the Excluded Property, when taken as a whole, is not material to the business operations or financial condition of the Grantors, taken as a whole. All Excluded Property shall be held in trust by the applicable Grantor for the benefit of the Collateral Agent for its benefit and for the benefit of the other Credit Parties and, on the exercise by the Collateral Agent of any of its rights and remedies under this Agreement following an Event of Default shall be assigned by such Grantor as the Collateral Agent shall direct.

SECTION 2.2 Secured Obligations. This Security Agreement secures, and the Collateral is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.3 Security Interest.

(a) Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to authenticate and file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto pursuant to the PPSA and any similar legislation in each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral as the Collateral Agent may require. Each Grantor agrees to provide all information as may be necessary or desirable to complete such filings promptly upon request by the Collateral Agent.

(b) Each Grantor hereby ratifies its prior authorization for the Collateral Agent to file in any relevant jurisdiction any financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof.

(c) Each Grantor hereby further authorizes the Collateral Agent to make filings with the Canadian Intellectual Property Office (or any successor office or any similar office in any other country) or other necessary documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Grantor hereunder in any Intellectual Property Collateral, without the signature of such Grantor, and naming such Grantor, as debtor, and the Collateral Agent, as secured party.

ARTICLE III
PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES;
USE OF COLLATERAL

SECTION 3.1 Delivery of Certificated Securities Collateral. Each Grantor represents and warrants that all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Collateral Agent in suitable form for transfer by delivery, and accompanied by duly executed instruments of transfer or assignment in blank and that the Collateral Agent has a perfected first priority security interest therein. Each Grantor hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Grantor after the date hereof, shall promptly (and in any event within three (3) Business Days) upon receipt thereof by such Grantor be delivered to and held by or on behalf of the Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery, and shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Collateral Agent. The

Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, the Collateral Agent shall have the right with written notice to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations, accompanied by instruments of transfer or assignment and letters of direction duly executed in blank.

SECTION 3.2 Perfection of Uncertificated Securities Collateral. Each Grantor represents and warrants that the Collateral Agent has a perfected first priority security interest in all uncertificated Pledged Securities pledged by it hereunder that is in existence on the date hereof and that, except as otherwise disclosed in writing to the Collateral Agent, the applicable Organization Documents do not require the consent of the other shareholders, members, partners or other Person to permit the Collateral Agent or its designee to be substituted for the applicable Grantor as a shareholder, member, partner or other equity owner, as applicable, thereto. Each Grantor hereby agrees that if any of the Pledged Securities are at any time not evidenced by certificates of ownership, then each applicable Grantor shall, to the extent permitted by applicable Law and upon the request of the Collateral Agent, cause such pledge to be recorded on the equityholder register or the books of the issuer, execute customary pledge forms or other documents necessary or reasonably requested to complete the pledge and give the Collateral Agent the right to transfer such Pledged Securities under the terms hereof and, provide to the Collateral Agent an opinion of counsel, in form and substance reasonably satisfactory to the Collateral Agent, confirming such pledge and perfection thereof.

SECTION 3.3 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Grantor represents and warrants that the only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interest granted by each Grantor to the Collateral Agent (for the benefit of the Credit Parties) pursuant to this Security Agreement in respect of the Collateral are listed on Schedule II hereto. Each Grantor represents and warrants that all such filings, registrations and recordings have been delivered to the Collateral Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule II. Each Grantor agrees that, at the sole cost and expense of the Grantors, (i) such Grantor will maintain the security interest created by this Security Agreement in the Collateral as a perfected first priority security interest and shall defend such security interest against the claims and demands of all Persons (other than with respect to Permitted Encumbrances), (ii) such Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the written request of the Collateral Agent, such Grantor shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as the Collateral Agent may reasonably request, including the filing of any financing statements, continuation statements and other documents (including this Security Agreement) under the PPSA (or other applicable Laws) in effect in any jurisdiction with respect to the security interest created hereby and the execution and delivery of Control Agreements, all in form reasonably satisfactory to the Collateral Agent and in such offices (including, without limitation, the Canadian Intellectual Property Office) wherever required by applicable Law in each case to perfect, continue and maintain a valid, enforceable, first priority security interest in the Collateral as provided herein and to preserve the other rights and interests granted to the Collateral Agent hereunder, as against the Grantors and third parties (other than with respect to Permitted Encumbrances), with respect to the Collateral.

SECTION 3.4 Other Actions. In order to further evidence the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Collateral, each Grantor represents, warrants and agrees, in each case at such Grantor's own expense, with respect to the following Collateral that:

(a) Instruments and Tangible Chattel Paper. As of the date hereof (i) no amount payable under or in connection with any of the Collateral is evidenced by any Instrument or Chattel Paper other than such Instruments and Chattel Paper listed in Section II.D of the Perfection Certificate and (ii) each Instrument and each item of Chattel Paper listed in Section II.D of the Perfection Certificate, to the extent requested by the Collateral Agent, has been properly endorsed, assigned and delivered to the Collateral Agent, accompanied by instruments of transfer or assignment and letters of direction duly executed in blank. If any amount payable under or in connection with any of the Collateral shall be evidenced by any Instrument or Chattel Paper, the Grantor acquiring such Instrument or Chattel Paper shall forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may reasonably request from time to time.

(b) Investment Property.

(i) As of the date hereof (1) it has no Securities Accounts other than those listed in Section II.B of the Perfection Certificate, (2) it does not hold, own or have any interest in any certificated securities or uncertificated securities other than those constituting Pledged Securities with respect to which the Collateral Agent has a perfected first priority security interest in such Pledged Securities, and (3) it has entered into a duly authorized, executed and delivered Securities Account Control Agreement with respect to each Securities Account listed in Section II.B of the Perfection Certificate with respect to which the Collateral Agent has a perfected first priority security interest in such Securities Accounts by Control.

(ii) If any Grantor shall at any time hold or acquire any certificated securities, such Grantor shall promptly notify the Collateral Agent thereof and (a) promptly deliver to the Collateral Agent such certificated securities and other materials as may be necessary or advisable from time to time to provide the Collateral Agent with control over all such certificated securities in the manner provided under section 23 of the STA, accompanied by such instruments of transfer or assignment duly executed in blank, all in form and substance reasonably satisfactory to the Collateral Agent or (b) deliver such securities into a Securities Account with respect to which a Securities Account Control Agreement is in effect in favour of the Collateral Agent. If any Grantor shall at any time hold or acquire any uncertificated securities, such Grantor shall promptly notify the Collateral Agent thereof and pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) promptly deliver to the Collateral Agent such documents, agreements and other materials as may be required from time to time to provide the Collateral Agent with control over such uncertificated securities in the manner provided under section 24 of the STA (and, for the purposes of section 27(1) of the STA, this Security Agreement shall constitute the Grantors' irrevocable consent to entry into an agreement of the kind referred to in clause 24(1)(b) of the STA), (b) cause a security entitlement with respect to such uncertificated security to be held in a Securities Account with respect to which the Collateral Agent has Control or (c) arrange for the Collateral Agent to become the registered owner of the securities.

Grantor shall not hereafter establish or maintain any Securities Account with any Securities Intermediary unless (1) the applicable Grantor shall have given the Collateral Agent ten (10) Business Days' prior written notice of its intention to establish such new Securities Account with such Securities Intermediary, (2) such Securities Intermediary shall be reasonably acceptable to the Collateral Agent and (3) such Securities Intermediary and such Grantor shall have duly executed and delivered a Control Agreement with respect to such Securities Account. Each Grantor shall accept any cash and Investment Property which are proceeds of the Pledged Securities in trust for the benefit of the Collateral Agent and promptly upon receipt thereof, deposit any cash received by it into an account in which the Collateral Agent has Control, or with respect to any Investment Properties or additional securities, take such actions as required above with respect to such securities. The Collateral Agent agrees with each Grantor that the Collateral Agent shall not give any entitlement orders or instructions or directions to any issuer of uncertificated securities or Securities Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Grantor, unless a Event of Default has occurred and is continuing. No Grantor shall grant control over any Pledged Securities to any Person other than the Collateral Agent.

(iii) Each Grantor shall deliver to the Collateral Agent any and all such documents, agreements and other materials as may be required from time to time to provide the Collateral Agent with control over all security entitlements of such Grantor in the manner provided under section 25 or 26 of the STA.

(iv) Each Grantor shall deliver to the Collateral Agent any and all such documents, agreements and other materials as may be required from time to time to provide the Collateral Agent with control over all Futures Contracts of such Grantor in the manner provided under subsection 1(2) of the PPSA.

(v) Each Grantor shall ensure that the terms of any interest in a partnership or limited liability company that is Collateral of such Grantor shall expressly provide that such interest is a "security" for the purposes of the STA.

(vi) If the constating documents of any Pledged Issuer (other than a ULC) restrict the transfer of the Securities of such Pledged Issuer, then such Grantor shall deliver to the Collateral Agent a certified copy of a resolution of the directors, shareholders, unitholders or partners of such Pledged Issuer, as applicable, consenting to the transfer(s) contemplated by this Security Agreement, including any prospective transfer of the Collateral of such Grantor by the Collateral Agent upon a realization on the Security Interests.

(vii) As between the Collateral Agent and the Grantors, the Grantors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a security entitlement or deposit by, or subject to the control of, the Collateral Agent, a Securities Intermediary, any Grantor or any other Person; provided, however, that nothing contained in this SECTION 3.4(b) shall release or relieve any Securities Intermediary of its duties and obligations to the Grantors or any other Person under any Control Agreement or under applicable Law. Each Grantor shall promptly pay all Claims and fees of whatever kind or nature with respect to the Pledged Securities pledged by it under this Security Agreement.

In the event any Grantor shall fail to make such payment contemplated in the immediately preceding sentence, the Collateral Agent may do so for the account of such Grantor and the Grantors shall promptly reimburse and indemnify the Collateral Agent for all costs and expenses incurred by the Collateral Agent under this SECTION 3.4(b) and under SECTION 9.3 hereof.

(viii) Each Grantor acknowledges that certain of the Collateral of such Grantor may now or in the future consist of ULC Shares, and that it is the intention of the Collateral Agent and each Grantor that neither the Collateral Agent nor any other Credit Party should under any circumstances prior to realization thereon be held to be a "member" or a "shareholder", as applicable, of a ULC for the purposes of any ULC Laws. Therefore, notwithstanding any provisions to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document, where a Grantor is the registered owner of ULC Shares which are Collateral of such Grantor, such Grantor shall remain the sole registered owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of the Agent, any other Credit Party, or any other Person on the books and records of the applicable ULC. Accordingly, each Grantor shall be entitled to receive and retain for its own account any dividend on or other distribution, if any, with respect to such ULC Shares (except for any dividend or distribution comprised of Pledged Security Certificates of such Grantor, which shall be delivered to the Agent to hold hereunder) and shall have the right to vote such ULC Shares and to control the direction, management and policies of the applicable ULC to the same extent as such Grantor would if such ULC Shares were not pledged to the Agent pursuant hereto. Nothing in this Agreement, the Credit Agreement or any other Loan Document is intended to, and nothing in this Agreement, the Credit Agreement or any other Loan Document shall, constitute the Agent, any other Credit Party, or any other Person other than the applicable Grantor, a member or shareholder of a ULC for the purposes of any ULC Laws (whether listed or unlisted, registered or beneficial), until such time as notice is given to such Grantor and further steps are taken pursuant hereto or thereto so as to register the Agent, any other Credit Party, or such other Person, as specified in such notice, as the holder of the ULC Shares. To the extent any provision hereof would have the effect of constituting the Agent or any other Credit Party as a member or a shareholder, as applicable, of any ULC prior to such time, such provision shall be severed herefrom and shall be ineffective with respect to ULC Shares which are Collateral of any Grantor without otherwise invalidating or rendering unenforceable this Agreement or invalidating or rendering unenforceable such provision insofar as it relates to Collateral of any Grantor which is not ULC Shares. Except upon the exercise of rights of the Agent to sell, transfer or otherwise dispose of ULC Shares in accordance with this Agreement, each Grantor shall not cause or permit, or enable a Pledged Issuer that is a ULC to cause or permit, the Agent or any other Credit Party to: (a) be registered as a shareholder or member of such Pledged Issuer; (b) have any notation entered in their favour in the share register of such Pledged Issuer; (c) be held out as shareholders or members of such Pledged Issuer; (d) receive, directly or indirectly, any dividends, property or other distributions from such Pledged Issuer by reason of the Agent holding the Security Interests over the ULC Shares; or (e) act as a shareholder of such Pledged Issuer, or exercise any rights of a shareholder including the right to attend a meeting of shareholders of such Pledged Issuer or to vote its ULC Shares.

(c) Letter-of-Credit Rights. If such Grantor is at any time a beneficiary under a letter of credit now or hereafter issued in favour of such Grantor (which, for the avoidance of doubt,

shall not include any letter of credit issued pursuant to the Credit Agreement), such Grantor shall promptly notify the Collateral Agent thereof and such Grantor shall, at the request of the Collateral Agent, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Collateral Agent of, and to pay to the Collateral Agent, the proceeds of any drawing under the letter of credit or (ii) arrange for the Collateral Agent to become the beneficiary of such letter of credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in the Credit Agreement.

(d) Motor Vehicles. As of the date hereof, it has no motor vehicles other than those listed in the Perfection Certificate.

SECTION 3.5 Supplements; Further Assurances. Each Grantor shall take such further actions, and execute and deliver to the Collateral Agent such additional assignments, agreements, supplements, powers and instruments, as the Collateral Agent may in its reasonable judgment deem necessary or appropriate, in order to perfect, preserve and protect the security interest in the Collateral as provided herein and the rights and interests granted to the Collateral Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm unto the Collateral Agent or permit the Collateral Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Collateral. If an Event of Default has occurred and is continuing, the Collateral Agent may institute and maintain, in its own name or in the name of any Grantor, such suits and proceedings as the Collateral Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Collateral. All of the foregoing shall be at the sole cost and expense of the Grantors.

SECTION 3.6 Joinder of Additional Grantors. The Grantors shall cause each direct or indirect Subsidiary of any Loan Party which, from time to time, after the date hereof shall be required to pledge any assets to the Collateral Agent for the benefit of the Credit Parties pursuant to the provisions of the Credit Agreement, to execute and deliver to the Collateral Agent a Perfection Certificate and a Joinder, in each case, within five (5) Business Days of the date on which it was acquired or created and, upon such execution and delivery, such Subsidiary shall constitute a "Grantor" for all purposes hereunder with the same force and effect as if originally named as a Grantor herein, including, but not limited to, granting the Collateral Agent a security interest in all Securities Collateral of such Subsidiary. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS

In addition to, and without limitation of, each of the representations, warranties and covenants set forth in the Credit Agreement and the other Loan Documents, each Grantor represents, warrants and covenants as follows:

SECTION 4.1 Limitation on Liens; Defense of Claims; Transferability of Collateral. Each Grantor is as of the date hereof, and, as to Collateral acquired by it from time to time after the date hereof, such Grantor will be, the sole direct and beneficial owner of all Collateral pledged by it hereunder free from any Lien or other right, title or interest of any Person other than the Liens and

security interest created by this Security Agreement and Permitted Encumbrances. Each Grantor shall, at its own cost and expense, defend title to the Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Collateral Agent and the priority thereof against all claims and demands of all Persons, at its own cost and expense, at any time claiming any interest therein adverse to the Collateral Agent or any other Credit Party other than Permitted Encumbrances. There is no agreement, and no Grantor shall enter into any agreement or take any other action, that would restrict the transferability of any of the Collateral or otherwise impair or conflict with such Grantors' obligations or the rights of the Collateral Agent hereunder.

SECTION 4.2 Chief Executive Office; Change of Name; Jurisdiction of Organization. The exact legal name, type of organization, jurisdiction of organization, all taxpayer account numbers, organizational identification number, chief executive office and domicile of such Grantor is indicated next to its name in Sections I.A and I.B of the Perfection Certificate. Such Grantor shall furnish to the Collateral Agent prompt written notice of any change in (i) its legal name, (ii) the location of its chief executive office, its principal place of business, its domicile, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility) or any additional jurisdiction in which it carries on business, has tangible Collateral or where any of its material account debtors are located, (iii) its identity or type of organization or corporate structure, (iv) any of its taxpayer account numbers or organizational identification number or, (v) its jurisdiction of organization (in each case, including, without limitation, by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction).. Such Grantor agrees (A) not to effect or permit any such change unless all filings have been made under the PPSA or otherwise that are required or advisable in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral (subject to, with respect to priority, Permitted Encumbrances having priority by operation of law) and (B) to take all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Credit Parties in the Collateral intended to be granted hereunder. Each Grantor agrees to promptly provide the Collateral Agent with certified Organization Documents reflecting any of the changes described in the preceding sentence.

SECTION 4.3 Location of Inventory and Equipment. As of the Closing Date, all Equipment and Inventory of such Grantor is located at the chief executive office or such other location listed in Schedule 5.08(b)(1) of the Credit Agreement.

SECTION 4.4 Condition and Maintenance of Equipment. The Equipment of such Grantor is in good repair, working order and condition, reasonable wear and tear excepted. Each Grantor shall cause the Equipment to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially reasonable make or cause to be made all repairs, replacements and other improvements which are necessary in the conduct of such Grantor's business.

SECTION 4.5 Due Authorization and Issuance. All of the Pledged Securities have been, and to the extent any Pledged Securities are hereafter issued, such shares or other equity interests will be, upon such issuance, duly authorized, validly issued and, to the extent applicable, fully paid and non-assessable. All of the Securities Collateral has been fully paid for, and there is no amount or other obligation owing by any Grantor to any issuer of the Securities Collateral in exchange for or in connection with the issuance of the Securities Collateral or any Grantor's status as a partner or a member of any issuer of the Securities Collateral.

SECTION 4.6 No Conflicts, Consents, etc. No consent of any party (including, without limitation, equity holders or creditors of such Grantor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required (A) for the grant of the security interest by such Grantor of the Collateral pledged by it pursuant to this Security Agreement or for the execution, delivery or performance hereof by such Grantor, (B) for the exercise by the Collateral Agent of the voting or other rights provided for in this Security Agreement or (C) for the exercise by the Collateral Agent of the remedies in respect of the Collateral pursuant to this Security Agreement except, in each case, for such consents which have been obtained prior to the date hereof. Following the occurrence and during the continuation of an Event of Default, if the Collateral Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Security Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Collateral Agent, such Grantor agrees to use commercially reasonable efforts to assist and aid the Collateral Agent to obtain as soon as commercially practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.7 Collateral. All information set forth herein, including the schedules annexed hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Credit Party in connection with this Security Agreement, including the Perfection Certificate, in each case, relating to the Collateral, is accurate and complete in all material respects. The Collateral described on the schedules annexed hereto constitutes all of the property of such type of Collateral owned or held by the Grantors.

SECTION 4.8 Insurance. Such Grantor shall maintain or shall cause to be maintained such insurance as is required pursuant to Section 6.07 of the Credit Agreement.

SECTION 4.9 Payment of Taxes; Compliance with Laws; Contested Liens; Claims. All Claims imposed upon or assessed against the Collateral have been paid and discharged except to the extent such Claims constitute a Lien not yet due and payable or a Permitted Encumbrance. Each Grantor shall comply with all applicable Law relating to the Collateral the failure to comply with which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Each Grantor may at its own expense contest the validity, amount or applicability of any Claims so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Credit Agreement. Notwithstanding the foregoing provisions of this SECTION 4.9, no contest of any such obligation may be pursued by such Grantor if such contest would expose the Collateral Agent or any other Credit Party to (i) any possible criminal liability or (ii) any additional civil liability for failure to comply with such obligations unless such Grantor shall have furnished a bond or other security therefor satisfactory to the Collateral Agent, or such other Credit Party, as the case may be.

SECTION 4.10 Access to Collateral, Books and Records; Other Information. Without limitation or duplication of the provisions of Section 6.10 of the Credit Agreement, upon reasonable prior request to each Grantor, the Collateral Agent, its agents, accountants and legal counsel shall have full and free access to visit and inspect, as applicable, during normal business hours, all of the Collateral including, without limitation, all of the books, correspondence and records of such Grantor relating thereto. The Collateral Agent and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and such Grantor agrees to render to the Collateral Agent, at such Grantor's cost and expense, such clerical and other assistance as may be reasonably requested by the Collateral Agent with regard thereto. Such Grantor shall, at any and all times, within

a reasonable time after written request by the Collateral Agent, furnish or cause to be furnished to the Collateral Agent, in such manner and in such detail as may be reasonably requested by the Collateral Agent, additional information with respect to the Collateral.

ARTICLE V
CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1 Pledge of Additional Securities Collateral. Each Grantor shall, upon obtaining any Securities Collateral of any Person required to be pledged hereunder, accept the same in trust for the benefit of the Collateral Agent and forthwith deliver to the Collateral Agent a pledge amendment, duly executed by such Grantor, in substantially the form of Exhibit 1 annexed hereto (each, a "Pledge Amendment"), and the certificates and other documents required under SECTION 3.1 and SECTION 3.2 hereof in respect of the additional Securities Collateral which are to be pledged pursuant to this Security Agreement, and confirming the attachment of the Lien hereby created on and in respect of such Securities Collateral. Each Grantor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Security Agreement and agrees that all Securities Collateral listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Collateral.

SECTION 5.2 Voting Rights; Distributions; etc.

(a) So long as no Event of Default shall have occurred and be continuing, each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Credit Agreement or any other Loan Document evidencing the Secured Obligations. The Collateral Agent shall be deemed without further action or formality to have granted to each Grantor all necessary consents relating to voting rights and shall, if necessary, upon written request of any Grantor and at the sole cost and expense of the Grantors, from time to time execute and deliver (or cause to be executed and delivered) to such Grantor all such instruments as such Grantor may reasonably request in order to permit such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to this SECTION 5.2(a).

(b) Upon the occurrence and during the continuance of any Event of Default, all rights of each Grantor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to SECTION 5.2(a) hereof without any action (other than, in the case of any Securities Collateral, the giving of any notice) shall immediately cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights; provided, that the Collateral Agent shall have the right, in its sole discretion, from time to time following the occurrence and continuance of an Event of Default to permit such Grantor to exercise such rights under SECTION 5.2(a).

(c) So long as no Event of Default shall have occurred and be continuing, each Grantor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with, and to the extent permitted by, the provisions of the Credit Agreement; provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall be forthwith delivered to the Collateral Agent to be held as Collateral and shall, if received by any Grantor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of

such Grantor and be forthwith delivered to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement). The Collateral Agent shall, if necessary, upon written request of any Grantor and at the sole cost and expense of the Grantors, from time to time execute and deliver (or cause to be executed and delivered) to such Grantor all such instruments as such Grantor may reasonably request in order to permit such Grantor to receive the Distributions which it is authorized to receive and retain pursuant to this SECTION 5.2(c).

(d) Upon the occurrence and during the continuance of any Event of Default, all rights of each Grantor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to SECTION 5.2(c) hereof shall cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Collateral such Distributions.

(e) Each Grantor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as the Collateral Agent may reasonably request in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to SECTION 5.2(b) hereof and to receive all Distributions which it may be entitled to receive under SECTION 5.2(c) hereof.

(f) All Distributions which are received by any Grantor contrary to the provisions of SECTION 5.2(c) hereof shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Grantor and shall immediately be paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

SECTION 5.3 Organization Documents. Each Grantor has delivered to the Collateral Agent true, correct and complete copies of its Organization Documents. The Organization Documents are in full force and effect. No Grantor will terminate or agree to terminate any Organization Documents or make any amendment or modification to any Organization Documents in a manner adverse to the Credit Parties.

SECTION 5.4 Defaults, Etc. Such Grantor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Grantor is a party relating to the Pledged Securities pledged by it, and such Grantor is not in violation of any other provisions of any such agreement to which such Grantor is a party, or otherwise in default or violation thereunder. No Securities Collateral pledged by such Grantor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Grantor by any Person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Organization Documents and certificates, if any, delivered to the Collateral Agent) which evidence any Pledged Securities of such Grantor.

SECTION 5.5 Certain Agreements of Grantors As Issuers and Holders of Equity Interests.

(a) In the case of each Grantor which is an issuer of Securities Collateral, such Grantor agrees to be bound by the terms of this Security Agreement relating to the Securities Collateral issued by it and will comply with such terms insofar as such terms are applicable to it.

(b) In the case of each Grantor which is a partner in a partnership, limited liability company or other entity, such Grantor hereby consents to the extent required by the applicable

Organization Documents to the pledge by each other Grantor, pursuant to the terms hereof, of the Securities Collateral in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Securities Collateral to the Collateral Agent or its nominee and to the substitution of the Collateral Agent or its nominee as a substituted partner or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner or a limited partner or member, as the case may be.

ARTICLE VI CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 6.1 Grant of License. Without limiting the rights of Collateral Agent as the holder of a Lien on the Intellectual Property Collateral, for the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article VIII hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, assign, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Grantor, wherever the same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

SECTION 6.2 Registrations. Except pursuant to licenses and other user agreements entered into by any Grantor in the ordinary course of business that are listed in Section III of the Perfection Certificate, on and as of the date hereof (i) each Grantor owns and possesses the right to use, and has done nothing to authorize or enable any other Person to use, any material Copyright, Patent or Trademark listed in Section III of the Perfection Certificate, and (ii) all registrations listed in Section III of the Perfection Certificate are valid and in full force and effect.

SECTION 6.3 No Violations or Proceedings. To each Grantor's knowledge, on and as of the date hereof, there is no violation by others of any right of such Grantor with respect to any Copyright, Patent or Trademark listed in Section III of the Perfection Certificate, respectively, pledged by it under the name of such Grantor.

SECTION 6.4 Protection of Collateral Agent's Security. On a continuing basis, each Grantor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Collateral Agent of (A) any adverse determination in any proceeding in the Canadian Intellectual Property Office (or any comparable office in any other jurisdiction) with respect to any Patent, Trademark or Copyright necessary for the conduct of business of such Grantor or (B) the institution of any proceeding or any adverse determination in any court or administrative body regarding such Grantor's claim of ownership in or right to use any of the Intellectual Property Collateral material to the use and operation of the Collateral, its right to register such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect, (ii) maintain and protect the Intellectual Property Collateral necessary for the conduct of business of such Grantor, (iii) not permit to lapse or become abandoned any Intellectual Property Collateral necessary for the conduct of business of such Grantor, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property Collateral, in

each case except as shall be consistent with commercially reasonable business judgment and, if any Event of Default has occurred and is continuing, with the prior approval of the Collateral Agent (such approval not to be unreasonably withheld), (iv) upon such Grantor's obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Collateral, the ability of such Grantor or the Collateral Agent to dispose of the Intellectual Property Collateral or any portion thereof or the rights and remedies of the Collateral Agent in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Intellectual Property Collateral or any portion thereof, (v) not license the Intellectual Property Collateral other than licenses entered into by such Grantor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the material licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of the Intellectual Property Collateral or the Lien on and security interest in the Intellectual Property Collateral intended to be granted to the Collateral Agent for the benefit of the Credit Parties, without the consent of the Collateral Agent, (vi) until the Collateral Agent exercises its rights to make collection, diligently keep adequate records respecting the Intellectual Property Collateral and (vii) furnish to the Collateral Agent from time to time upon the Collateral Agent's reasonable request therefor detailed statements and amended schedules further identifying and describing the Intellectual Property Collateral and such other materials evidencing or reports pertaining to the Intellectual Property Collateral as the Collateral Agent may from time to time request. Notwithstanding the foregoing, nothing herein shall prevent any Grantor from selling, disposing of or otherwise using any Intellectual Property Collateral as permitted under the Credit Agreement.

SECTION 6.5 After-Acquired Property. If any Grantor shall, at any time before this Security Agreement shall have been terminated in accordance with SECTION 9.5(a), (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this SECTION 6.5 with respect to such Grantor shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Security Agreement without further action by any party. With respect to any registered Intellectual Property Collateral, each Grantor shall promptly (a) provide to the Collateral Agent written notice of any of the foregoing and (b) confirm the attachment of the Lien and security interest created by this Security Agreement to any rights described in clauses (i) and (ii) of the immediately preceding sentence of this SECTION 6.5 by execution of an instrument in form reasonably acceptable to the Collateral Agent.

SECTION 6.6 Modifications. Each Grantor authorizes the Collateral Agent to modify this Security Agreement by amending Section III of the Perfection Certificate to include any Intellectual Property Collateral acquired or arising after the date hereof of such Grantor including, without limitation, any of the items listed in SECTION 6.5 hereof.

SECTION 6.7 Litigation. Unless there shall occur and be continuing any Event of Default, each Grantor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Grantors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are

necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Grantor, the Collateral Agent or the other Credit Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Grantor shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents requested by the Collateral Agent in aid of such enforcement and the Grantors shall promptly reimburse and indemnify the Collateral Agent, as the case may be, for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this SECTION 6.7 in accordance with SECTION 9.3 hereof. In the event that the Collateral Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Grantor agrees, at the request of the Collateral Agent, to take all commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any Person so infringing necessary to prevent such infringement.

SECTION 6.8 Third Party Consents. Each Grantor shall use commercially reasonable efforts to obtain the consent of third parties to the extent such consent is necessary or desirable to create a valid, perfected security interest in favour of the Collateral Agent in any Intellectual Property Collateral.

ARTICLE VII CERTAIN PROVISIONS CONCERNING ACCOUNTS

SECTION 7.1 Special Representations and Warranties. As of the time when any of its Accounts is included in the Borrowing Base, each Grantor shall be deemed to have represented and warranted that such Account and all records, papers and documents relating thereto (i) are genuine and correct and in all material respects what they purport to be, (ii) represent the legal, valid and binding obligation of the account debtor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability, evidencing indebtedness unpaid and owed by such account debtor, arising out of the performance of labour or services or the sale, lease, license, assignment or other disposition and delivery of the goods or other property listed therein or out of an advance or a loan, and (iii) are in all material respects in compliance and conform with all applicable material federal, provincial and local Laws and applicable Laws of any relevant foreign jurisdiction.

SECTION 7.2 Maintenance of Records. Each Grantor shall keep and maintain at its own cost and expense materially complete records of each Account, in a manner consistent with prudent business practice, including, without limitation, records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto. Each Grantor shall, at such Grantor's sole cost and expense, upon the Collateral Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts, including, without limitation, all documents evidencing Accounts and any books and records relating thereto to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Grantor). Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may transfer a full and complete copy of any Grantor's

books, records, credit information, reports, memoranda and all other writings relating to the Accounts to and for the use by any Person that has acquired or is contemplating acquisition of an interest in the Accounts or the Collateral Agent's security interest therein in accordance with applicable Law without the consent of any Grantor.

SECTION 7.3 Legend. Each Grantor shall legend, at the request of the Collateral Agent made at any time after the occurrence and during the continuance of any Event of Default and in form and manner reasonably satisfactory to the Collateral Agent, the Accounts and the other books, records and documents of such Grantor evidencing or pertaining to the Accounts with an appropriate reference to the fact that the Accounts have been collaterally assigned to the Collateral Agent for the benefit of the Credit Parties and that the Collateral Agent has a security interest therein.

SECTION 7.4 Modification of Terms, Etc. No Grantor shall rescind or cancel any indebtedness evidenced by any Account or modify any term thereof or make any adjustment with respect thereto except in the ordinary course of business consistent with prudent business practice, or extend or renew any such indebtedness except in the ordinary course of business consistent with prudent business practice or compromise or settle any dispute, claim, suit or legal proceeding relating thereto or sell any Account or interest therein except in the ordinary course of business consistent with prudent business practice or in accordance with the Credit Agreement without the prior written consent of the Collateral Agent.

SECTION 7.5 Collection. Each Grantor shall cause to be collected from the account debtor of each of the Accounts, as and when due in the ordinary course of business consistent with prudent business practice (including, without limitation, Accounts that are delinquent, such Accounts to be collected in accordance with generally accepted commercial collection procedures), any and all amounts owing under or on account of such Account, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account. The costs and expenses (including, without limitation, legal fees) of collection, in any case, whether incurred by any Grantor, the Collateral Agent or any other Credit Party, shall be paid by the Grantors.

ARTICLE VIII REMEDIES

SECTION 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default the Collateral Agent may, and at the direction of the Required Lenders, shall, from time to time in respect of the Collateral, in addition to the other rights and remedies provided for herein, under applicable Law or otherwise available to it:

(a) Personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from any Grantor or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Grantor's premises where any of the Collateral is located, remove such Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Grantor;

(b) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Collateral including, without limitation, instructing the obligor or

obligors on any agreement, instrument or other obligation constituting part of the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to any Grantor, prior to receipt by any such obligor of such instruction, such Grantor shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly pay such amounts to the Collateral Agent;

(c) Sell, assign, grant a license to use or otherwise liquidate, or direct any Grantor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(d) Take possession of the Collateral or any part thereof, by directing any Grantor in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Grantor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and therewith delivered to the Collateral Agent, (B) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Grantor's obligation to deliver the Collateral as contemplated in this SECTION 8.1 is of the essence hereof. Upon application to any court having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by any Grantor of such obligation;

(e) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Grantor constituting Collateral for application to the Secured Obligations as provided in SECTION 8.7 hereof;

(f) Retain and apply the Distributions to the Secured Obligations as provided in Article V hereof;

(g) Carry on, or concur in the carrying on of, any or all of the business or undertaking of any Grantor;

(h) Obtain from any court an order for the sale or foreclosure of any of the Collateral;

(i) Appoint by instrument in writing one or more Receivers of any or all Grantors or any or all of the Collateral of any or all Grantor with such rights, powers and authority (including any or all of the rights, powers and authority of the Collateral Agent under this Security Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable Law, any Receiver appointed by the Collateral Agent shall (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of any such Grantor and not of the Collateral Agent or any of the other Credit Parties;

(j) Obtain from any court an order for the appointment of a Receiver of any or all Grantors or of any or all of the Collateral of any or all Grantors;

(k) Deal with any Contract or Permit of any Grantor to the same extent as any such Grantor might;

(l) Exercise any and all rights as beneficial and legal owner of the Collateral, including, without limitation, perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Collateral; and

(m) Exercise all the rights and remedies of a secured party under the PPSA and any other applicable statute, or otherwise available to the Agent at law or in equity, and the Collateral Agent may also in its sole discretion, without notice except as specified in SECTION 8.2 hereof, sell, assign or grant a license to use the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, as part of one or more going out of business sales in the Collateral Agent's own right or by one or more agents and contractors, all as the Collateral Agent, in its sole discretion, may deem advisable, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem advisable. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Collateral Agent shall have the right to conduct such sales on any Grantor's premises and shall have the right to use any Grantor's premises without charge for such sales for such time or times as the Collateral Agent may see fit. The Collateral Agent and any agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Collateral Agent or such agent or contractor and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. The Collateral Agent or any other Credit Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of any Collateral payable by such Person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives, to the fullest extent permitted by Law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. To the fullest extent permitted by Law, each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree.

SECTION 8.2 Notice of Sale. Each Grantor acknowledges and agrees that, to the extent notice of sale or other disposition of Collateral shall be required by applicable Law and unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Collateral Agent shall provide such Grantor such advance notice as may be practicable under the circumstances), ten (10) days' prior notice to such Grantor of the time and place of any public sale or of the time after which any private sale or other

intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Grantor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying (as permitted under Law) any right to notification of sale or other intended disposition.

SECTION 8.3 Waiver of Notice and Claims. Each Grantor hereby waives, to the fullest extent permitted by applicable Law, notice or judicial hearing in connection with the Collateral Agent's exercise of the remedies set forth in SECTION 8.1 (including, without limitation, the taking possession or the Collateral Agent's disposition of any of the Collateral), including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Grantor would otherwise have under law, and each Grantor hereby further waives, to the fullest extent permitted by applicable Law: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable Law. The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII in the absence of its own gross negligence or willful misconduct. Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Grantor therein and thereto, and shall be a perpetual bar both at law and in equity against such Grantor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Grantor.

SECTION 8.4 Sales of Collateral.

(a) To the extent that any applicable Law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner and without prejudice to the ability of the Agent to dispose of the Collateral in any such manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent to (a) incur expenses reasonably deemed significant by the Collateral Agent to prepare the Collateral of such Grantor for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) fail to obtain third party consents for access to the Collateral of such Grantor to be disposed of, (c) fail to exercise collection remedies against account Grantors or other Persons obligated on the Collateral of such Grantor or to remove Liens against the Collateral of such Grantor, (d) exercise collection remedies against account Grantors and other Persons obligated on the Collateral of such Grantor directly or through the use of collection agencies and other collection specialists, (e) dispose of Collateral of such Grantor by way of public auction, public tender or private contract, with or without advertising and without any other formality, (f) contact other Persons, whether or not in the same business of such Grantor, for expressions of interest in acquiring all or any portion of the Collateral of such Grantor, (g) hire one or more professional auctioneers to assist in the disposition of the Collateral of such Grantor, whether or not such Collateral is of a specialized nature or an upset or reserve bid or price is established, (h) dispose of the Collateral of such Grantor by utilizing internet sites that provide for the auction of assets of the types included in such Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) dispose of assets in wholesale rather than retail markets, (j) disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of the Collateral of such Grantor or to provide to the Collateral Agent a guaranteed return from the collection or disposition of such Collateral, (l) to the extent deemed appropriate by the Collateral Agent, obtain the services of other brokers,

investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral of such Grantor, (m) dispose of Collateral of such Grantor in whole or in part, and (n) dispose of Collateral of such Grantor to a customer of the Collateral Agent, and (o) establish an upset or reserve bid price with respect to Collateral of such Grantor.

(b) Each Grantor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Governmental Authority, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Grantor acknowledges that any such sales may be at prices and on terms less favourable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable Law, the Collateral Agent shall have no obligation to engage in public sales.

(c) Each Grantor recognizes that, by reason of certain prohibitions contained in applicable securities Laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral and Investment Property, to limit purchasers to Persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sales may be at prices and on terms less favourable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under applicable securities Laws, even if such issuer would agree to do so.

(d) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Grantor shall from time to time furnish to the Collateral Agent all such information as the Collateral Agent may reasonably request in order to determine the number of securities included in the Securities Collateral or Investment Property which may be sold by the Collateral Agent as exempt transactions under applicable securities Laws, as the same are from time to time in effect.

(e) Each Grantor further agrees that a breach of any of the covenants contained in this SECTION 8.4 will cause irreparable injury to the Collateral Agent and the other Credit Parties, that the Collateral Agent and the other Credit Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this SECTION 8.4 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

SECTION 8.5 No Waiver; Cumulative Remedies.

(a) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any

such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Grantors, the Collateral Agent and each other Credit Party shall be restored to their respective former positions and rights hereunder with respect to the Collateral, and all rights, remedies and powers of the Collateral Agent and the other Credit Parties shall continue as if no such proceeding had been instituted.

SECTION 8.6 Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and be continuing, upon the written demand of Collateral Agent, each Grantor shall execute and deliver to Collateral Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights and such other documents as are necessary or appropriate to carry out the intent and purposes hereof to the extent such assignment does not result in any loss of rights therein under applicable Law. Within five (5) Business Days of written notice thereafter from Collateral Agent, each Grantor shall make available to Collateral Agent, to the extent within such Grantor's power and authority, such personnel in such Grantor's employ on the date of the Event of Default as Collateral Agent may reasonably designate to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold by such Grantor under the registered Patents, Trademarks and/or Copyrights, and such Persons shall be available to perform their prior functions on Collateral Agent's behalf.

SECTION 8.7 Application of Proceeds. The proceeds received by the Collateral Agent or any Receiver in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent or any Receiver of its remedies shall be applied, together with any other sums then held by the Collateral Agent or any Receiver pursuant to this Security Agreement, in accordance with and as set forth in Section 8.03 of the Credit Agreement.

ARTICLE IX MISCELLANEOUS

SECTION 9.1 Concerning Collateral Agent.

(a) The Collateral Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact. The Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Security Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Security Agreement. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions

taken or omitted to be taken by it under this Security Agreement while it was the Collateral Agent.

(b) The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Collateral Agent nor any of the other Credit Parties shall have responsibility for, without limitation (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Collateral Agent or any other Credit Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any Person with respect to any Collateral.

(c) The Collateral Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all matters pertaining to this Security Agreement and its duties hereunder, upon advice of counsel selected by it.

(d) If any item of Collateral also constitutes collateral granted to Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, Collateral Agent, in its sole discretion, shall select which provision or provisions shall control.

SECTION 9.2 Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If any Grantor shall fail to perform any covenants contained in this Security Agreement or in the Credit Agreement (including, without limitation, such Grantor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Claims, (iii) make repairs, (iv) discharge Liens, or (v) pay or perform any other obligations of such Grantor with respect to any Collateral) or if any warranty on the part of any Grantor contained herein shall be breached, the Collateral Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which such Grantor fails to pay or perform as and when required hereby. Any and all amounts so expended by the Collateral Agent shall be paid by the Grantors in accordance with the provisions of SECTION 9.3 hereof. Neither the provisions of this SECTION 9.2 nor any action taken by Collateral Agent pursuant to the provisions of this SECTION 9.2 shall prevent any such failure to observe any covenant contained in this Security Agreement nor any breach of warranty from constituting an Event of Default. Each Grantor hereby appoints the Collateral Agent its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, or otherwise, from time to time after the occurrence and during the continuation of an Event of Default in the Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms of the Credit Agreement and the other Security Documents which the Collateral Agent may deem necessary to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 9.3 Expenses. Each Grantor will upon demand pay to the Collateral Agent the amount of any and all amounts required to be paid pursuant to Section 10.04 of the Credit Agreement.

SECTION 9.4 Continuing Security Interest; Assignment. This Security Agreement shall create a continuing security interest in the Collateral and shall (i) be binding upon the Grantors, their respective successors and assigns, and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Credit Parties and each of their respective successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of any Grantor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Credit Party may assign or otherwise transfer any indebtedness held by it secured by this Security Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Credit Party, herein or otherwise, subject, however, to the provisions of the Credit Agreement.

SECTION 9.5 Termination; Release.

(a) If (i) the Commitments shall have expired or been terminated, (ii) the principal of and interest on each Loan and all fees and other Secured Obligations shall have been indefeasibly paid in full in cash, (iii) all Letters of Credit (as defined in the Credit Agreement) shall have (A) expired or terminated and have been reduced to zero, (B) been Cash Collateralized to the extent required by the Credit Agreement, or (C) been supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuer and the Administrative Agent, and (iv) all Unreimbursed Amounts shall have been indefeasibly paid in full in cash; the Grantors make request that the Agent release the Grantors and the Collateral from the Liens created by this Security Agreement; provided, however, that the Collateral Agent may require such indemnities as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Secured Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Secured Obligations that may thereafter arise under Section 10.04 of the Credit Agreement.

(b) In connection with any release contemplated by clause (a) of this SECTION 9.5, the Collateral Agent shall, upon the request and at the sole cost and expense of the Grantors, assign, transfer and deliver to the Grantors, against receipt and without recourse to or warranty by the Collateral Agent, such of the Collateral to be released (in the case of a release) or all of the Collateral (in the case of termination of this Security Agreement) as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments acknowledging the termination hereof or the release of such Collateral, as the case may be.

(c) At any time that the respective Grantor desires that the Collateral Agent take any action described in clause (b) of this SECTION 9.5, such Grantor shall, upon request of the Collateral Agent, deliver to the Collateral Agent an officer's certificate certifying that the release of the respective Collateral is permitted pursuant to clause (a) or (b) of this SECTION 9.5. The Collateral Agent shall have no liability whatsoever to any other Credit Party as the result of any release of Collateral by it as permitted (or which the Collateral Agent in good faith believes to be permitted) by this SECTION 9.5.

SECTION 9.6 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Grantor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed by the Collateral Agent and the Grantors. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Grantor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Security Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Grantor in any case shall entitle any Grantor to any other or further notice or demand in similar or other circumstances.

SECTION 9.7 Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, as to any Grantor, addressed to it at the address of the Lead Borrower set forth in the Credit Agreement and as to the Collateral Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other parties hereto complying as to delivery with the terms of this SECTION 9.7.

SECTION 9.8 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.

SECTION 9.9 CONSENT TO JURISDICTION; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE PROVINCE OF ONTARIO AND ANY APPELLATE COURT THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH GRANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECURITY AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (A) OF THIS SECTION. EACH GRANTOR HEREBY IRREVOCABLY

WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH GRANTOR AGREES THAT ANY ACTION COMMENCED BY ANY GRANTOR ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT LOCATED IN THE PROVINCE OF ONTARIO AS THE COLLATERAL AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.7. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND WHETHER INITIATED BY OR AGAINST ANY SUCH PERSON OR IN WHICH ANY SUCH PERSON IS JOINED AS A PARTY LITIGANT). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.10 Severability of Provisions. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 9.11 Execution in Counterparts; Effectiveness. This Security Agreement may be executed in any number of counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Security Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Security Agreement.

SECTION 9.12 No Release. Nothing set forth in this Security Agreement shall relieve any Grantor from the performance of any term, covenant, condition or agreement on such Grantor's part to be performed or observed under or in respect of any of the Collateral or from any liability to any Person under or in respect of any of the Collateral or shall impose any obligation on the Collateral Agent or any other Credit Party to perform or observe any such term, covenant, condition or

agreement on such Grantor's part to be so performed or observed or shall impose any liability on the Collateral Agent, any Receiver or any other Credit Party for any act or omission on the part of such Grantor relating thereto or for any breach of any representation or warranty on the part of such Grantor contained in this Security Agreement, the Credit Agreement or the other Loan Documents, or under or in respect of the Collateral or made in connection herewith or therewith. The obligations of each Grantor contained in this SECTION 9.12 shall survive the termination hereof and the discharge of such Grantor's other obligations under this Security Agreement, the Credit Agreement and the other Loan Documents.

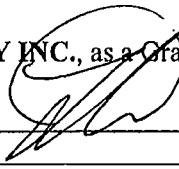
SECTION 9.13 Obligations Absolute. All obligations of each Grantor hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, winding-up, restructuring or the like of any Grantor;
- (b) any lack of validity or enforceability of the Credit Agreement or any other Loan Document, or any other agreement or instrument relating thereto;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement or any other Loan Document or any other agreement or instrument relating thereto;
- (d) any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;
- (e) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Credit Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of SECTION 9.6 hereof; or
- (f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Grantor (other than the termination of this Security Agreement in accordance with SECTION 9.5(a) hereof).

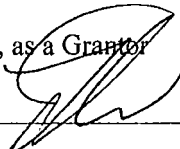
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IN WITNESS WHEREOF, the Grantors and the Collateral Agent have caused this Security Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

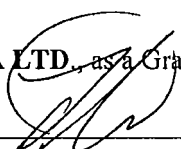
J.S.N. JEWELLERY INC., as a Grantor

By: 
Name: _____
Title: _____


2373138 ONTARIO INC., as a Grantor

By: 
Name: _____
Title: _____

6721657 MANITOBA LTD., as a Grantor

By: 
Name: _____
Title: _____

FOREVER JEWELLERY INC., as a Grantor

By: 
Name: _____
Title: _____

SALUS CAPITAL PARTNERS, LLC, as Collateral
Agent

By:

Name:

Title:

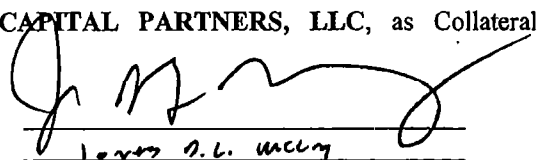

James D. L. McCarty
Senior Vice President

EXHIBIT 1

[Form of]

SECURITIES PLEDGE AMENDMENT

This Securities Pledge Amendment, dated as of _____, is delivered pursuant to SECTION 5.1 of that certain General Security Agreement (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Security Agreement," capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of [_____, 201_] made by (i) [_____] as lead borrower for itself and the other Borrowers (the "Lead Borrower"), (ii) EACH OF THE OTHER ENTITIES LISTED ON THE SIGNATURE PAGES HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with the Lead Borrower, in such capacities and together with any successors in such capacities, the "Grantors," and each, a "Grantor"), in favour of SALUS CAPITAL PARTNERS, LLC, having an office at 197 First Avenue, Suite 250, Needham, MA 02494, in its capacity as collateral agent for the Credit Parties, as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent"). The undersigned hereby agrees that this Securities Pledge Amendment may be attached to the Security Agreement and that the Pledged Securities and/or Intercompany Notes listed on this Securities Pledge Amendment shall be deemed to be and shall become part of the Collateral and shall secure all Secured Obligations.

PLEDGED SECURITIES

<u>ISSUER</u>	<u>CLASS OF STOCK OR INTERESTS</u>	<u>[PAR VALUE]</u>	<u>CERTIFICATE NO(S).</u>	<u>NUMBER OF SHARES OR INTERESTS</u>	<u>PERCENTAGE OF ALL ISSUED CAPITAL OR OTHER EQUITY INTERESTS OF ISSUER</u>
---------------	--	------------------------	-------------------------------	--	---

INTERCOMPANY NOTES

<u>ISSUER</u>	<u>PRINCIPAL AMOUNT</u>	<u>DATE OF ISSUANCE</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>
---------------	-----------------------------	-----------------------------	--------------------------	--------------------------

[_____] ,
as Grantor

By: _____
Name:
Title:

AGREED TO AND ACCEPTED:

SALUS CAPITAL PARTNERS, LLC, as Collateral Agent

By: _____
Name:
Title:

SCHEDULE I

Intercompany Notes

<u>Name of Company</u>	<u>Issuer of Instrument</u>	<u>Principal Amount of Instrument</u>	<u>Maturity Date</u>	<u>Notes</u>
J.S.N. Jewellery Inc.	2373138 Ontario Inc.	<u>\$35,696,000</u>	Demand Note	Upon J.S.N. Jewellery Inc. closing the financing transactions with Salus, J.S.N. will loan 2373138 Ontario Inc. \$35,696,000, such amount to be subsequently loaned by 2373138 Ontario Inc. to 6721657 Manitoba Ltd. in order to finance the acquisition of Ben Moss.
2373138 Ontario Inc.	6721657 Manitoba Ltd	<u>\$35,696,000</u>	Demand Note	

SCHEDULE II

Filings, Registrations and Recordings

1. By Salus Capital Partners, LLC as Creditor against J.S.N. Jewellery Inc. as Debtor in Ontario via the *Personal Property Security Act* (Ontario)
2. By Salus Capital Partners, LLC as Creditor against 2373138 Ontario Inc. as Debtor in Ontario via the *Personal Property Security Act* (Ontario)
3. By Salus Capital Partners, LLC as Creditor against Forever Jewellery Inc. as Debtor in Ontario via the *Personal Property Security Act* (Ontario)
4. By Salus Capital Partners, LLC as Creditor against 6721657 Manitoba Ltd. as Debtor in Manitoba via the *Personal Property Security Act* (Manitoba)
5. By Salus Capital Partners, LLC as Creditor against Ben Moss Jewellers Western Canada Inc. in Manitoba via the *Personal Property Security Act* (Manitoba)
6. By Salus Capital Partners, LLC as Creditor against Ben Moss Jewellers Western Canada Inc. in Saskatchewan via the *Personal Property Security Act, 1993* (Saskatchewan)
7. By Salus Capital Partners, LLC as Creditor against Ben Moss Jewellers Western Canada Inc. in Alberta via the *Personal Property Security Act* (Alberta)
8. By Salus Capital Partners, LLC as Creditor against Ben Moss Jewellers Western Canada Inc. in British Columbia via the *Personal Property Security Act* (British Columbia)
9. By Salus Capital Partners, LLC as Creditor against Ben Moss Jewellers Western Canada Inc. in New Brunswick via the *Personal Property Security Act* (New Brunswick)
10. By Salus Capital Partners, LLC as Creditor against Ben Moss Jewellers Western Canada Inc. in Nova Scotia via the *Personal Property Security Act* (Nova Scotia)
11. By Salus Capital Partners, LLC as Creditor against GMJ Corporation as Debtor in Delaware via the *Uniform Commercial Code* (Delaware)

12. By Salus Capital Partners, LLC as Creditor against GMJ Corporation as Debtor in Washington via the *Uniform Commercial Code* (Washington)

13. By Salus Capital Partners, LLC as Creditor against J.S.N. Jewellery UK Limited as Debtor in the United Kingdom via the *Companies Act, 2006* (United Kingdom)

SCHEDULE III

Securities Collateral

<u>Grantor</u>	<u>Issuer</u>	<u>Type of Organization</u>	<u># of Shares Owned</u>	<u>Total Shares Outstanding</u>	<u>% of Interest Pledged</u>	<u>Certificate No. (if uncertificated, please indicate so)</u>
J.S.N. Jewellery Inc.	2373138 Ontario Inc.	Corporation	100 Common Shares	100 Common Shares	0.1	C-1
J.S.N. Jewellery Inc.	2373138 Ontario Inc.	Corporation	100,000 Common Shares	100,100 Common Shares	99.9	C-2
J.S.N. Jewellery Inc.	J.S.N. Jewellery UK Limited	Company	999,900 Ordinary "A" Shares	1,700,000	100	36
J.S.N. Jewellery Inc.	J.S.N. Jewellery UK Limited	Company	350,000 Ordinary "A" Shares	1,700,000	100	35
J.S.N. Jewellery Inc.	J.S.N. Jewellery UK Limited	Company	350,000 Ordinary "A" Shares	1,700,000	100	32
2373138 Ontario Inc.	6721657 Manitoba Ltd.	Corporation	100 Class A Common Shares	100 Class A Common Shares	0.1	1AC
2373138 Ontario Inc.	6721657 Manitoba Ltd.	Corporation	100,000 Class A Common Shares	100,100 Class A Common Shares	99.9	2AC
2373138 Ontario Inc.	Ben Moss Jewellers Western Canada Inc. (post-amalgamation)	Corporation	100,100 Class A Common Shares	100,100 Class A Common Shares	100	1AC

Also see Schedule I, "Intercompany Notes", above.

All Distributions.

SECURITIES PLEDGE AMENDMENT

This Securities Pledge Amendment, dated as of July 18, 2013 is delivered pursuant to SECTION 5.1 of that certain General Security Agreement (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Security Agreement," capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of July 18, 2013 made by (i) J.S.N. Jewellery Inc. as lead borrower for itself and the other Borrowers (the "Lead Borrower"), (ii) EACH OF THE OTHER ENTITIES LISTED ON THE SIGNATURE PAGES HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with the Lead Borrower, in such capacities and together with any successors in such capacities, the "Grantors," and each, a "Grantor"), in favour of SALUS CAPITAL PARTNERS, LLC, having an office at 197 First Avenue, Suite 250, Needham, MA 02494, in its capacity as collateral agent for the Credit Parties, as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent"). The undersigned hereby agrees that this Securities Pledge Amendment may be attached to the Security Agreement and that the Pledged Securities and/or Intercompany Notes listed on this Securities Pledge Amendment shall be deemed to be and shall become part of the Collateral and shall secure all Secured Obligations.

PLEDGED SECURITIES

<u>ISSUER</u>	<u>CLASS OF STOCK OR INTERESTS</u>	<u>[PAR VALUE]</u>	<u>CERTIFICATE NO(S).</u>	<u>NUMBER OF SHARES OR INTERESTS</u>	<u>PERCENTAGE OF ALL ISSUED CAPITAL OR OTHER EQUITY INTERESTS OF ISSUER</u>
2373138 Ontario Inc.	Common shares	-	C1	100	0.09
2373138 Ontario Inc	Common shares	\$200	C2	100,000	99.9

INTERCOMPANY NOTES

<u>Name of Company</u>	<u>Issuer of Instrument</u>	<u>Principal Amount of Instrument</u>	<u>Maturity Date</u>	<u>Notes</u>
J.S.N. Jewellery Inc.	2373138 Ontario Inc.	<u>\$35,696,000</u>	Demand Note	Upon J.S.N. Jewellery Inc. closing the financing transactions with Salus, J.S.N. will loan 2373138 Ontario Inc. \$35,696,000, such amount to be subsequently loaned by 2373138 Ontario Inc. to 6721657 Manitoba Ltd. in order to finance the acquisition of Ben Moss.
2373138 Ontario Inc.	6721657 Manitoba Ltd	<u>\$35,696,000</u>	Demand Note	

[signature on following page]

J.S.N. JEWELLERY INC.
as Grantor

By: _____
Name: Joseph Shilon
Title: President



AGREED TO AND ACCEPTED:

SALUS CAPITAL PARTNERS, LLC, as Collateral Agent

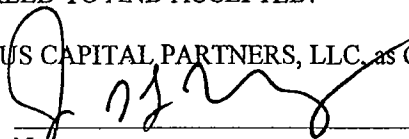
By: _____
Name:
Title:

J.S.N. JEWELLERY INC.
as Grantor

By: _____
Name: Joseph Shilon
Title: President

AGREED TO AND ACCEPTED:

SALUS CAPITAL PARTNERS, LLC, as Collateral Agent

By: 
Name: James D.L. McLaughlin
Title: Senior Vice President

SECURITIES PLEDGE AMENDMENT

This Securities Pledge Amendment, dated as of July 18, 2013 is delivered pursuant to SECTION 5.1 of that certain General Security Agreement (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Security Agreement," capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of July 18, 2013 made by (i) J.S.N. Jewellery Inc. as lead borrower for itself and the other Borrowers (the "Lead Borrower"), (ii) EACH OF THE OTHER ENTITIES LISTED ON THE SIGNATURE PAGES HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with the Lead Borrower, in such capacities and together with any successors in such capacities, the "Grantors," and each, a "Grantor"), in favour of SALUS CAPITAL PARTNERS, LLC, having an office at 197 First Avenue, Suite 250, Needham, MA 02494, in its capacity as collateral agent for the Credit Parties, as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent"). The undersigned hereby agrees that this Securities Pledge Amendment may be attached to the Security Agreement and that the Pledged Securities and/or Intercompany Notes listed on this Securities Pledge Amendment shall be deemed to be and shall become part of the Collateral and shall secure all Secured Obligations.

PLEDGED SECURITIES

<u>ISSUER</u>	<u>CLASS OF STOCK OR INTERESTS</u>	<u>[PAR VALUE]</u>	<u>CERTIFICATE NO(S).</u>	<u>NUMBER OF SHARES OR INTERESTS</u>	<u>PERCENTAGE OF ALL ISSUED CAPITAL OR OTHER EQUITY INTERESTS OF ISSUER</u>
6721657 Manitoba Ltd.	Class Common shares	A	1AC	100	0.09
6721657 Manitoba Ltd.	Class Common shares	A \$200	2AC	100,000	99.9
Ben Moss Jewellers Western Canada Inc. (post- amalgamati on)	Class Common shares	A	1AC	100,100	100

INTERCOMPANY NOTES

<u>Name of Company</u>	<u>Issuer of Instrument</u>	<u>Principal Amount of Instrument</u>	<u>Maturity Date</u>	<u>Notes</u>
J.S.N. Jewellery Inc.	2373138 Ontario Inc.	<u>\$35,696,000</u>	Demand Note	Upon J.S.N. Jewellery Inc. closing the financing transactions with Salus, J.S.N. will loan 2373138 Ontario Inc. \$35,696,000, such amount to be subsequently loaned by 2373138 Ontario Inc. to 6721657 Manitoba Ltd. in order to finance the acquisition of Ben Moss.
2373138 Ontario Inc.	6721657 Manitoba Ltd	<u>\$35,696,000</u>	Demand Note	

[signature on following page]

2373138 ONTARIO INC.
as Grantor

By: _____

Name: Joseph Shilon
Title: President



AGREED TO AND ACCEPTED:

SALUS CAPITAL PARTNERS, LLC, as Collateral Agent

By: _____

Name:
Title:

2373138 ONTARIO INC.
as Grantor

By: _____
Name: Joseph Shilon
Title: President

AGREED TO AND ACCEPTED:

SALUS CAPITAL PARTNERS, LLC, as Collateral Agent

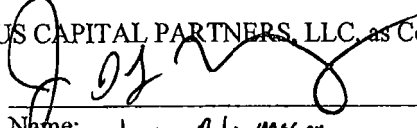
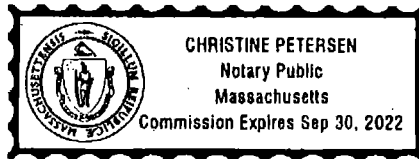
By: 
Name: Jean A. L. Mery
Title: Jean Vice President

EXHIBIT “G”

Attached is Exhibit "G" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



ACCOMMODATION AGREEMENT

THIS ACCOMMODATION AGREEMENT (this "**Accommodation Agreement**") is made with effect as of the 16th day of May, 2016 and is entered into by and among:

SALUS CAPITAL PARTNERS, LLC, as Administrative Agent,
Collateral Agent and Lender

- and -

SALUS CLO 2012-1, LTD., as Lender

- and -

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED,
GMJ CORP.**, and **BEN MOSS JEWELLERS WESTERN CANADA
LTD.**, as Borrowers

- and -

**2373138 ONTARIO INC., FOREVER JEWELLERY INC.,
ALWAYS & FOREVER FAMILY COLLECTION
INCORPORATED, P.M.R. INC. and JOSEPH SHILON**, as
Guarantors

RECITALS:

- A. J.S.N. Jewellery Inc. (the "**Lead Borrower**"), J.S.N. Jewellery UK Limited ("**JSN UK**"), GMJ Corp. ("**GMJ**") and Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**" and, together with the Lead Borrower, JSN UK, and GMJ, the "**Borrowers**") are indebted to Salus Capital Partners, LLC ("**Salus**") and the other lender under the Credit Agreement (as defined below) with respect to certain credit facilities (the "**Credit Facilities**") granted by Salus to the Borrowers pursuant to and under the terms of a Credit Agreement dated July 18, 2013 between the Borrowers, 2373138 Ontario Inc. ("**2373**"), Forever Jewellery Inc. ("**FJI**") and Joseph Shilon, as guarantors (collectively, the "**Guarantors**" and, each, a "**Guarantor**" and, together with the Borrowers, the "**Obligors**") and Salus, in its capacity as administrative and collateral agent (the "**Agent**") and lender, and the other lenders party thereto from time to time (collectively, with Salus, the "**Lenders**"), as amended by a First Amending Agreement made as of September 25, 2014 between the Borrowers, the Guarantors, the Agent and the Lenders (as further amended, supplemented, restated, replaced or renewed from time to time, the "**Credit Agreement**").
- B. As security for the payment of all advances made to the Borrowers under the Credit Facilities and all other present and future indebtedness, fees, expenses and other liabilities due by the Borrowers to the Agent and the Lenders (collectively, the "**Obligations**"), the Agent holds the security made by the Borrowers detailed in **Schedule "A"** to this

Accommodation Agreement (as amended, supplemented, restated, replaced or renewed from time to time, the "**Borrowers' Security**").

- C. The Guarantors have made the guarantees of the Obligations in favour of the Agent and the Lenders detailed on **Schedule "A"** to this Accommodation Agreement (the "**Guarantees**") and have granted security to the Agent detailed on **Schedule "A"** to this Accommodation Agreement for their respective obligations under the Guarantees (amended, supplemented, restated, replaced or renewed from time to time, collectively, the "**Guarantors' Security**" and, together with the Borrowers' Security, the "**Security**").
- D. The Borrowers are in breach of their obligations under the Credit Agreement as a result of their inability to pay an excess amount (over and above the Borrowing Base provided for in the Credit Agreement) drawn down under the Credit Agreement which constitutes an Overadvance under the Credit Agreement and as a result of being in breach of their Collateral Coverage Ratio covenant (collectively, the "**Specified Events of Default**").
- E. Ben Moss informed the Agent of its intention to seek an order pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granting it protection from its creditors, and seeking the appointment of Alvarez & Marsal Canada Inc. ("**A&M**") as monitor, which also constitutes a further Event of Default (together with the Specified Events of Default and any and all other Events of Default existing as of the date of this Accommodation Agreement, the "**Existing Defaults**").
- F. As a result of the Existing Defaults, the Agent, by its counsel, issued demands for repayment of the Obligations to each of the Obligors (collectively, the "**Demands**" and, each, a "**Demand**"), which Demands, in the case of each Loan Party, were accompanied by a Notice of Intention to Enforce Security (collectively, the "**BIA Notices**") pursuant subsection 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), all dated May 16, 2016.
- G. The Demands to the Borrowers terminated the Borrowers' rights to receive any further extensions or accommodations of credit pursuant to the Credit Agreement or otherwise.
- H. The notice period set out in the BIA Notices has been waived by each of the Obligors and the Obligors have failed to repay the outstanding Obligations and the Agent is entitled to pursue any and all remedies to enforce its rights pursuant to the Credit Agreement, the Security and the other Loan Documents, as such term is defined in the Credit Agreement (hereinafter, the "**CA Loan Documents**"), as well as under applicable Laws, including, without limitation, the right to appoint, or seek the court-appointment of, a receiver over the Loan Parties.
- I. The Obligors have requested that the Agent forbear from exercising and enforcing any rights and remedies available under applicable Laws or under the CA Loan Documents arising as a result of the Existing Defaults to allow Ben Moss to commence its proceedings under the CCAA (the "**CCAA Proceedings**") and, among other things, conduct a Court-

supervised refinancing sale and/or investment solicitation process ("**RISP**"), in connection with the Obligations and Ben Moss' obligations under the DIP Facility (as defined below).

- J. The Obligors have also requested that Salus provide (i) continued funding to the Borrowers under the Credit Facilities, on the terms and conditions and subject to the limitations as specified in the Credit Agreement as amended by this Accommodation Agreement, and (ii) additional funding to Ben Moss through a debtor-in-possession credit facility in the CCAA Proceeding (the "**DIP Facility**").
- K. In consideration for the Agent's commitments herein to forbear and for the Lenders to continue funding the Borrowers and for Salus CLO 2012-1, Ltd., in its capacity as lender under the DIP Facility (in such capacity, the "**DIP Lender**"), to provide the DIP Facility:
- (1) Ben Moss as borrower and each of the other Obligors and their Affiliates, Always & Forever Family Collection Incorporated ("**AFFC**") and P.M.R. Inc. ("**PMR**"), as guarantors, have agreed to enter into a credit agreement governing the DIP Facility with Salus as administrative agent, collateral agent and the Lenders party thereto (the "**DIP Credit Agreement**");
 - (2) AFFC and PMR have each agreed to provide an unlimited, secured guarantee of all obligations to the Agent under the Credit Facilities and to the Salus as administrative and collateral agent under the DIP Facility (in such capacity, the "**DIP Agent**");
 - (3) Joseph Shilon has agreed to amend his personal Guarantee to also guarantee all obligations to the DIP Agent and increase the guaranteed principal amount thereunder to \$11,000,000;
 - (4) all the other Borrowers and the corporate Guarantors have agreed to provide a secured guarantee of Ben Moss's obligations under the DIP Facility, provided however that nothing contained herein shall increase the amount of the guarantee of the Credit Facilities that was provided by FJI, which guarantee shall also guarantee obligations to the DIP Agent; and
 - (5) JSN U.K. has agreed to provide such additional guarantee and/or debenture documents as are required by Salus.

NOW THEREFORE, in consideration of the premises above, the respective covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Accommodation Agreement, unless the context otherwise requires, all capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the

Credit Agreement and the DIP Credit Agreement, as applicable. All monetary amounts referred to in this Agreement shall refer to Canadian currency save and except where the initials "U.S." appear in reference to any sum, in which event such reference shall be to currency of the United States of America.

1.2 Gender and Number

Words importing the singular include the plural and vice versa and words importing gender include all genders.

1.3 Severability

Each of the provisions contained in this Accommodation Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Accommodation Agreement.

1.4 Headings

The division of this Accommodation Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Accommodation Agreement.

1.5 Attornment

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario for all matters arising out of or in connection with this Accommodation Agreement.

1.6 Conflicts

If there is any inconsistency or conflict between the terms of this Accommodation Agreement and the terms of the Credit Agreement, the DIP Credit Agreement, the Guarantees, the Security or any other CA Loan Document or Loan Document under the DIP Credit Agreement (hereinafter, a "**DIP Loan Document**" and, together with all CA Loan Documents, the "**Loan Documents**" and, each, a "**Loan Document**"), the provisions of this Accommodation Agreement shall prevail to the extent of the inconsistency or conflict, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Lender under the Credit Agreement, the DIP Credit Agreement, the Guarantees, the Security, any other Loan Document or this Accommodation Agreement other than as may be specifically contemplated herein.

ARTICLE 2 ACKNOWLEDGEMENTS AND CONFIRMATIONS

2.1 Acknowledgements and Confirmations

The Obligors, AFFC and PMR hereby irrevocably and unconditionally acknowledge, agree, represent, warrant, confirm and agree as follows:

- (a) the statements contained in the Recitals of this Accommodation Agreement are true and accurate in every respect;
- (b) the Security is fully enforceable by the Agent against the Obligors and the Agent is entitled to exercise all of its rights and remedies under the Security;
- (c) the Obligations under the Credit Agreement as of the date of this Accommodation Agreement set out on **Schedule "B"** hereto are owing by the Obligors, jointly and severally, to the Agent and Lenders unconditionally, without offset, defence or counterclaim of any kind, nature or description whatsoever;
- (d) the Existing Defaults have occurred and are continuing and each constitutes a Default and an Event of Default under the Credit Agreement for all purposes and the Obligors will not assert or exercise any right of defence, dispute, counterclaim or other right, claim, demand, challenge, objection or appeal of any kind in respect of such Existing Defaults;
- (e) each of the Demands and the BIA Notices has been validly and effectively given to the Obligor to which it was addressed in full compliance with the CA Loan Documents and applicable Laws and will remain in full force and effect at all times until the Obligations are paid to the Agent in full, subject only to the provisions of this Accommodation Agreement;
- (f) the notice period set out in the BIA Notices is hereby waived and the Obligors hereby consent to immediate enforcement of the Security;
- (g) the Agent has not waived and shall not be deemed to have waived any of the Existing Defaults and the Agent has validly and effectively accelerated all Indebtedness and, subject only to the provisions of this Accommodation Agreement, the Agent is immediately entitled, in respect of the Existing Defaults, without limitation or restriction of any kind and as it may determine in its sole discretion, to take and exercise all rights, remedies, actions, proceedings and claims available to the Agent as secured creditor under or in respect of the Credit Agreement, the Obligations, the CA Loan Documents or otherwise under applicable Laws, including, without limitation, the appointment of a receiver, an interim receiver or trustee in bankruptcy under the BIA (such rights, remedies, action, proceedings and claims, collectively, "**Lender Enforcement Actions**");
- (h) nothing in this Accommodation Agreement constitutes a withdrawal or revocation of any of the Demands or the BIA Notices, or a waiver by or on behalf of the Agent of any Existing Defaults, a waiver of any other existing or future defaults or Events of Defaults under the Credit Agreement, the DIP Credit Agreement, the Security or the other CA Loan Documents or a waiver of any Lender Enforcement Actions relating to any existing or future defaults or Events of Default under the Credit Agreement, the DIP Credit Agreement, the Security, the other CA Loan Documents or applicable Laws (including the Existing Defaults), or a waiver of the obligation

of the Obligors to pay the entirety of the Obligations and the DIP Facility to the Agent and the DIP Agent, as applicable, when due;

- (i) the Credit Agreement, the DIP Credit Agreement, the Security and the other Loan Documents including without limitation the obligations and liabilities of the Obligors under each Loan Document, are in full force and effect, constitute legal, valid and binding obligations of the Obligors enforceable against the Obligors in accordance with their terms, and each Obligor hereby waives and agrees not to assert or cause to be asserted on its behalf, and is hereby estopped from asserting or causing to be asserted on its behalf, any rights of defense, dispute, counterclaim, set-off, deduction or other rights, claims, demands, challenges, objections or appeals of any kind whatsoever arising from or relating to any matter, cause or thing whatsoever existing as of the date of this Accommodation Agreement, whether in respect to the legal effect of any of the Loan Documents or the legality, validity or binding effect of the obligations of the Obligors thereunder or the enforceability of same;
- (j) all financial and other information provided by the Obligors, AFFC and PMR to the Agent (or its advisors) with respect to the Collateral under both the Credit Agreement and the DIP Credit Agreement (hereinafter, the "**Collateral**") is true, accurate and complete in all material respects as of the date of preparation, and any projections provided to the Agent are based upon assumptions believed to be reasonable as of the date of preparation and there has been no material change in any such assumptions (or in their reasonableness) or in actual results in operations to date which has not been disclosed in writing to the Agent or its advisors;
- (k) this Accommodation Agreement has been duly executed and delivered by a duly authorized officer on behalf of each Obligor, AFFC and PMR, and constitutes a legal, valid and binding obligation of the Obligors, AFFC and PMR enforceable in accordance with its terms;
- (l) this Agreement has been fairly and freely negotiated between sophisticated commercial parties having received the benefit of legal advice of experienced legal counsel, and the Obligors, AFFC and PMR are entering into this Agreement voluntarily and without duress, bad faith, unreasonable or oppressive conduct, undue influence or other unfair advantage of any kind by or on behalf of the Agent or any other Person;
- (m) nothing herein shall require or constitute an agreement on the part of the Agent (i) to forbear from taking or exercising any Lender Enforcement Actions at any time in respect of any future Event of Default; or (ii) to forbear in the exercise of any Lender Enforcement Actions at any time upon or following the occurrence of any Forbearance Termination Event (as defined in section 7.1 below);
- (n) as of the date hereof, the Agent has acted in a commercially reasonable manner and the Obligors, AFFC and PMR are estopped from disputing same;

- (o) as of the date hereof, the Borrowers have remained in possession and control of their businesses and assets at all times except where such possession and control of Inventory is given up in the ordinary course of business;
- (p) as of the date hereof, the representations and warranties of the Obligors, AFFC and PMR set forth in the DIP Credit Agreement are true and correct on and as of the date hereof, except where any such representation or warranty expressly relates to a different date, and except to the extent such representation and warranties may be rendered untrue or incorrect by the existence of the Existing Defaults;
- (q) in entering into this Accommodation Agreement, the Agent is relying on the covenants, acknowledgements, agreements, representations and warranties of the Obligors, AFFC and PMR being true and correct at all times and that all such covenants, acknowledgements, agreements, representations and warranties are and will continue to be in full force and effect at all times, both before, during and after any Forbearance Period (as defined in section 4.1 below), notwithstanding (i) that any of the forbearance conditions in section 4.2 below (the "**Forbearance Conditions**") may not be satisfied or waived, or (ii) any expiry of the Forbearance Period;
- (r) all terms and conditions of the CA Loan Documents shall continue in full force and effect save and except as amended by this Accommodation Agreement, and to the extent that any provision thereof is inconsistent with this Accommodation Agreement, this Accommodation Agreement shall prevail;
- (s) the DIP Credit Agreement is being entered into, in part, to provide further extensions of credit to Ben Moss to allow Ben Moss to continue to operate during the CCAA Proceedings;
- (t) both the existing cash management arrangements under the Credit Agreement and the cash management arrangements to be established in accordance with section 6.13 of the DIP Credit Agreement (the "**Ben Moss Cash Management**") are being maintained or established, as the case may be, to allow Salus to maintain the collateral monitoring and protection that it currently has over all of Ben Moss' proceeds of Collateral under the terms of the Credit Agreement and the Blocked Account Agreement;
- (u) all parties to this Agreement agree and acknowledge that the Forbearance Fee (as defined in subsection 5.2 below) is in consideration for the forbearance of the Agent's rights against the Obligors (other than Ben Moss) as contemplated in this Accommodation Agreement;
- (v) proceeds of Ben Moss Collateral shall be applied toward repayment of the Permitted Overadvance under the Credit Agreement, the DIP Facility and the Credit Facilities in accordance with the DIP Loan Agreement and the terms of the Ben Moss Cash Management;

- (w) all the Obligors, AFFC and PMR will continue to be liable, during the Forbearance Period (as defined in subsection 4.1(a) below) and the CCAA Proceedings, for all the present and future Obligations of each Obligor, AFFC and PMR under the Credit Agreement and the DIP Credit Agreement.
- (x) all parties to this Accommodation Agreement acknowledge that Chaitons LLP is acting as sole counsel to Joseph Shilon in connection with this Accommodation Agreement, the CCAA Proceedings and related matters; and
- (y) all parties to this Accommodation Agreement acknowledge that Osler, Hoskin & Harcourt LLP ("**Osler**") is acting as counsel to the Borrowers, 2373, AFFC and PMR in connection with this Accommodation Agreement, the CCAA Proceedings and related matters, and that Osler will only take instructions from the Chief Restructuring Officer (as defined below) as part of such mandate.

ARTICLE 3 AMENDMENTS TO CREDIT AGREEMENT

- 3.1 The cash management provisions of section 6.13 of the Credit Agreement and any cash management CA Loan Documents are amended, as required, to accommodate the inception and operation of the Ben Moss Cash Management.
- 3.2 Upon the date of repayment in full (the "**Repayment Date**") of any Borrowings made under the Credit Agreement or the DIP Credit Agreement in Canadian Dollars, the Obligors, shall be liable for and pay such additional amount as may be necessary to ensure that the amount actually received in Canadian Dollars in repayment of such Borrowings, when converted into U.S. Dollars at the Spot Rate prevailing on the Repayment Date, will produce the amount of U.S. Dollars equal to the Borrowings.
- 3.3 The definition of "Borrowing Base" in section 1.01 of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

"**Borrowing Base**" means, at any time of calculation, an amount equal to (without duplication):

- (a) 90% of the face amount of Eligible Trade Receivables of the Borrowers other than Ben Moss;

plus

- (b) with respect to finished goods jewellery inventory which is Eligible Inventory, 95% of the Appraised Value of such Eligible Inventory;

plus

- (c) with respect to Approved Precious Metals/Stones Inventory of the Lead Borrower, which is Eligible Inventory, 90% of the Cost of such Eligible Inventory;

minus

(d) the amount of all Availability Reserves at such time; and

minus

(e) the Availability Block.

For the purpose of valuing any of the foregoing denominated in U.S. Dollars, the amount in U.S. Dollars shall be converted into the Equivalent Amount thereof in Canadian Dollars; provided that Agent reserves the right to adjust such conversion rate to take into account currency rate exchange fluctuations since the last valuation thereof.”

- 3.4 The definition of “Collateral Coverage Ratio” in section 1.01 of the Credit Agreement is hereby deleted in its entirety.
- 3.5 The definition of “Permitted Consignment Inventory” in section 1.01 of the Credit Agreement is hereby deleted in its entirety (without replacement).
- 3.6 The assets of the Guarantors, AFFC and PMR shall not be Eligible Inventory.
- 3.7 Any Change of Control under the DIP Credit Agreement shall constitute a Change in Control under the Credit Agreement and vice versa.
- 3.8 An Event of Default under the DIP Credit Agreement shall be an Event of Default under the Credit Agreement and vice versa.
- 3.9 Every Request for Borrowing under the Credit Agreement shall include a breakdown regarding the intended use of the funds to be borrowed, in the same fashion as Requests for Borrowings under the DIP Credit Agreement and the Request for Borrowing in respect of the Permitted Overadvance.

ARTICLE 4 FORBEARANCE

4.1 Forbearance

- (a) In reliance upon the representations, warranties and covenants of the Obligors contained in this Accommodation Agreement, the Agent agrees to forbear from exercising its rights and remedies under the Security, the Guarantees and under applicable Laws in accordance with the terms and conditions of this Accommodation Agreement, and any document(s) executed in connection herewith, for the period (the “**Forbearance Period**”) commencing on the date the conditions precedent in subsections 4.2(a), and (d) are confirmed satisfied or waived by the Agent in writing and ending on the earliest of:

- (i) July 29, 2016; and

- (ii) the occurrence of any Forbearance Termination Event (as defined in section 7.1 below),

or such later date as agreed to in writing by the Monitor, the Agent and the Obligors (the "**Forbearance Termination Date**").

- (b) Subject to the satisfaction of the conditions in subsections 4.2(a) and (d), the Agent agrees that it shall take no further action or proceedings in furtherance of the Demands or the BIA Notices during the currency of the Forbearance Period.
- (c) Upon the expiration or termination of the Forbearance Period, the agreement of the Agent to forbear shall automatically and without further action terminate and be of no further force and effect, it being expressly agreed that the effect of such termination will be to permit the Agent, at its option, to take all Lender Enforcement Actions on not less than one (1) Business Days' notice to the Obligors, including, without limitation, but subject to the terms of any Court order as may be granted requiring the Agent to obtain prior approval of the Court on two Business Days' notice to affected parties or such other notice as may be required by the Court, and which Order the Obligors shall consent to.

4.2 Conditions

Conditions Precedent

- (a) As conditions precedent to the Agent's forbearance and funding obligations under this Accommodation Agreement:
 - (i) each of the Obligors, AFFC and PMR shall have executed and delivered this Accommodation Agreement;
 - (ii) Ben Moss, as borrower and each of the other Obligors, AFFC and PMR, as guarantors, shall have executed and delivered the DIP Credit Agreement;
 - (iii) JSN U.K. shall have executed and delivered such additional guarantee and/or debenture documents requested by Salus, in forms satisfactory to Salus;
 - (iv) JSN U.K. shall obtain appropriate board and shareholder resolutions in connection with the guarantee and/or debenture documents within 10 days following the execution of the DIP Credit Agreement;
 - (v) in connection with the establishment of the Ben Moss Cash Management, Ben Moss, and within 10 days following the execution of the DIP Credit Agreement, AFFC and PMR, shall have delivered to Salus the following:
 - (A) copies of all Credit Card Notifications;
 - (B) an executed Blocked Account Agreement; and

- (C) copies of all DDA Notifications,
as each of such terms is defined in the DIP Credit Agreement;
- (vi) AFFC shall have also executed and delivered:
 - (A) an unlimited guarantee, in form satisfactory to Salus, of all obligations of Ben Moss to Salus, including under the Credit Agreement and the DIP Credit Agreement (the "**AFFC Guarantee**");
 - (B) a general security agreement, in form satisfactory to Salus, securing all obligations under the AFFC Guarantee (the "**AFFC Obligations**"); and
 - (C) such other security for the AFFC Obligations as Salus may reasonably require;
- (vii) PMR shall have also executed and delivered:
 - (A) an unlimited guarantee, in form satisfactory to Salus, of all obligations of Ben Moss to Salus, including under the Credit Agreement and the DIP Credit Agreement (the "**PMR Guarantee**");
 - (B) a general security agreement, in form satisfactory to Salus, securing all obligations under the PMR Guarantee (the "**PMR Obligations**"); and
 - (C) such other security for the PMR Obligations as Salus may reasonably require;
- (viii) Joseph Shilon shall have also executed and delivered an amended personal guarantee of all obligations of the Borrowers under the Credit Agreement and the DIP Credit Agreement, to a new maximum principal amount of \$11,000,000;
- (ix) the Agent shall have received a copy of written confirmation of a repayment plan from Aurum Group Limited and Aurum Holdings Limited in respect of their obligations owing to JSN U.K., on terms and conditions acceptable to the Agent, which the Agent acknowledges has been received and satisfies this condition precedent for purposes of this Accommodation Agreement at this time;
- (x) each of the Borrowers, 2373, AFFC and PMR shall have appointed a chief restructuring officer (the "**Chief Restructuring Officer**") acceptable to both A&M, in its capacity as intended Monitor in the CCAA Proceedings, and the Agent;

- (xi) Joseph Shilon shall have unconditionally and irrevocably delegated his signing authority and all authority to direct the operations and management as a director and officer to the Chief Restructuring Officer for each entity over which the Chief Restructuring Officer is to be appointed;
- (xii) all other conditions precedent to the initial Borrowing under Section 4.01 of the DIP Credit Agreement shall have been satisfied or waived in writing, with the exception of the conditions relating to commencement of the CCAA Proceedings in Subsections 4.01(p) and (q) of the DIP Credit Agreement.

Restructuring Plan

- (b) The Borrowers will comply with and generally operate their businesses in a manner consistent with the:
 - (i) the 13-week cash flow projections/ budget under the DIP Credit Agreement set out on **Schedule "C"** to this Accommodation Agreement, as such projections may only be modified from time to time by A&M in consultation with the Chief Restructuring Officer and with the written consent of the Agent (the **"Cash Flows"**);
 - (ii) the RISP; and
 - (iii) in all material respects, as determined by the Agent in its Permitted Discretion, the detailed restructuring plan that has been provided to the Agent and any revisions to such forecast in form and substance satisfactory to the Agent in its Permitted Discretion (the **"Restructuring Plan"**).
- (c) Without limiting the forgoing, the Obligors, AFFC and PMR shall implement the Restructuring Plan without a negative variance of sales, cash receipts, expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and on a negative variance of Availability by more than 10%, which shall all be tested each time a Request for Borrowing is made under the Credit Facilities and each week pursuant to a Variance Report (as defined in subsection 4.2(bb) below) and Borrowing Base Certificates delivered by the Borrowers to the Agent.

Forever Jewellery

FJI shall have returned to the Lead Borrower all of the Lead Borrower's inventory in its possession by no later than May 17, 2016, excluding inventory related to known or recurring orders and a minimal safety stock of certain inventory styles.

Any purchases by FJI from the Lead Borrower shall be made on a cash on delivery basis.

Whitpay Inc. and SUM Investments Inc.

No payments or distributions or loans or guarantees or other transactions shall be made by the Obligors, AFFC or PMR to or with Whitpay Inc. or SUM Investments Inc. without the Agent's prior written consent.

Utopia & Global

- (d) *As a further condition precedent* to the Agent's forbearance, the Obligors' Thai Affiliates, Utopia Jewellery Co. and Utopia Diamond Inc. (collectively, "**Utopia**"), and the Obligors' Israeli Affiliate, Global Diamonds (G.D.) Ltd. ("**Global Diamonds**") shall have all executed and delivered the Assignment, Postponement, Waiver and Estoppel, in the form attached hereto as **Schedule "D"**.
- (e) Any supplier payments to be made to and by Utopia or Global Diamonds shall be monitored by A&M.
- (f) Starting no later than the date that is 30 days after the date hereof, Utopia shall be, or be treated as being, an arm's length supplier and no payment shall be made to Utopia other than on account of legitimate invoices for product received by the Lead Borrower, JSN UK or GMJ.
- (g) All amounts paid to Utopia and Global Diamonds shall be in accordance with the Cash Flows.
- (h) The Obligors shall use commercially reasonable efforts to provide cash flows for Utopia and Global Diamonds within 15 days of the date hereof.

Consultant

- (i) The Lead Borrower shall have engaged either Gordon Brothers Group or other similar retail and merchandising consultant acceptable to Ben Moss, A&M and the Agent (the "**Consultant**"), on terms and scope satisfactory to the Agent (including, without limitation, authorizing direct communication between the Consultant and the Agent concerning the subject matter of the engagement).
- (j) The findings in the Consultant shall be satisfactory to the Agent and the Obligors, acting reasonably, and the Obligors agree to implement the recommendations of the Consultant which are acceptable to the Chief Restructuring Officer and the Monitor, acting reasonably.

CCAA Proceedings

- (k) By not later than 1 Business Day after the date of this Accommodation Agreement, Ben Moss will obtain an order from the Court commencing the CCAA Proceedings

(the "**Initial Order**"), in form satisfactory to the Agent, providing, inter alia, for the following:

- (i) a declaration that Ben Moss is a company to which the CCAA applies;
- (ii) appropriate stay of proceedings and continuation of services clauses;
- (iii) the appointment of A&M as monitor in the CCAA Proceedings (the "**Monitor**");
- (iv) approval of the appointment of the Chief Restructuring Officer in respect of Ben Moss;
- (v) the approval of Ben Moss' borrowing under the DIP Facility;
- (vi) a charge in favour of the DIP Agent to secure the obligations under the DIP Credit Agreement (the "**DIP Obligations**") in the maximum principal amount of the U.S. dollar equivalent to CDN\$8,000,000, subordinate only to a charge in favour of the Monitor, the Monitor's counsel, Ben Moss' counsel, the Chief Restructuring Officer and Joseph Shilon's counsel (in the case of Joseph Shilon's counsel, however, such charge will only secure those costs incurred up to the date of the Initial Order) in a maximum amount of \$600,000;
- (vii) approving and providing for the continuation of the Ben Moss Cash Management under the Credit Agreement and the DIP Credit Agreement;
- (viii) approving the RISP, substantially in the form attached hereto as **Schedule "E"**, and as may be modified by mutual agreement of the Chief Restructuring Officer, the Monitor and the DIP Agent;
- (ix) that the Agent, the Lenders, the DIP Agent and the DIP Lender be treated as unaffected in any plan of arrangement or compromise filed in the CCAA Proceedings, with respect to all Obligations under the DIP Facility and the Credit Facilities,

and such Court Order shall remain in full force and effect and continue with any necessary modification during the Forbearance Period.

- (l) If deemed prudent by the Monitor, Ben Moss shall initiate foreign non-main proceedings to recognize the CCAA Proceedings and orders of the Court made therein;
- (m) If, within 30 days of the date of this Accommodation Agreement, no Qualified LOI (as defined in the RISP) has been received, unless otherwise agreed to by the Agent, the Lead Borrower shall, and the Chief Restructuring Officer shall authorize the Lead Borrower to, within 2 days, seek an order of the Court in the CCAA Proceedings, in a form satisfactory to the Agent, acting reasonably, among other

things, declaring the Lead Borrower and certain of the other Obligors, AFFC and PMR to be companies to which the CCAA applies and imposing a stay of proceedings.

Refinancing and/or Investment Solicitation Process

- (n) Upon commencement of the CCAA Proceedings, the Borrowers, with the assistance of Joseph Shilon and with the assistance and supervision of the Monitor and the Chief Restructuring Officer, shall implement the RISP and achieve the milestones set out therein, provided that, notwithstanding the terms of the RISP, the Phase 1 Bid Deadline, as defined therein, shall be not later than the date that is 30 days subsequent to the date of the Initial Order, and the Phase 2 Bid Deadline, as defined in the RISP, shall be not later than the date that is 60 days subsequent to the date of the Initial Order, subject to a possible 15 day extension in accordance with the RISP, all subject to extension on written consent of the Agent.
- (o) The Borrowers and/or A&M shall provide the Agent or its advisors weekly progress reporting on the Restructuring Plan and the RISP as required pursuant to the DIP Credit Agreement.

Credit Facilities, Cash Management and Interim Repayment

- (p) The Borrowers shall continue to pay interest on all amounts outstanding under the CA Loan Documents in accordance with section 5.1 hereof.
- (q) The Borrowers shall at any and all times maintain the Ben Moss Cash Management.
- (r) The Borrowers, including Ben Moss, shall first repay the Permitted Overadvance owing under and as defined in the Credit Agreement and reflected in the Cash Flows, in permanent reduction thereof in accordance with the Cash Flows, and then Ben Moss shall repay any Borrowings under the DIP Credit Agreement including an amount equal to 100% of the Net Cash Proceeds received by Ben Moss on account of a Prepayment Event (as such terms are defined in the DIP Credit Agreement) and, thereafter, the Borrowers, including Ben Moss, shall repay all other Pre-Petition Liabilities with any surplus proceeds pursuant to the Ben Moss Cash Management, all in accordance with the DIP Credit Agreement.

Co-operation

- (s) Upon commencement of the CCAA proceedings, the Monitor shall be authorized to continue to monitor all the Obligors, as well as AFFC and PMR, and to provide periodic reports to the Agent including with respect to supplier payments to be made by Utopia and Global Diamonds.
- (t) The Obligors, AFFC and PMR shall cooperate with the Agent in reviewing the Cash Flows and any documents associated with valuations or assessments on any of the property of the Obligors, AFFC and PMR that forms Collateral.

- (u) The Obligors, AFFC and PMR shall permit the Agent to discuss their affairs, finances and condition with the Chief Restructuring Officer and the financial and legal advisors of the Obligors, AFFC and PMR, any sale, investment or refinancing advisors, and employees provided that the Monitor and/or the legal and/or financial advisors to the Obligors, AFFC and PMR are present or are advised of any such discussions with employees in advance of such discussions taking place.
- (v) The Obligors, AFFC and PMR shall provide promptly all information requested by the Agent or its advisors, including any legal counsel, financial advisors, or appraisers engaged on behalf of the Agent, and shall provide full access to the books, records, property and assets of the Obligors, AFFC and PMR wherever they may be situated, which right of access shall include the right to inspect and appraise such property and assets.
- (w) The Obligors, AFFC and PMR shall cooperate and grant full access to the Agent's appraiser, 360 Merchant Solutions LLC, as it appraises and grades the Borrowers' diamond and other gemstone inventory.
- (x) The Obligors, AFFC and PMR shall cooperate and grant full access to the Agent's security contractors.
- (y) Joseph Shilon shall cooperate with the Chief Restructuring Officer, A&M and the Monitor in the implementation of the RISP, collection of Accounts Receivable and customer relationship in accordance with their instructions and directions.
- (z) Joseph Shilon shall not interfere with or exert any authority or control over the conduct of the business of the Obligors, AFFC or PMR, or the RISP; however, nothing in this provision shall restrict Joseph Shilon from taking any action that he is so instructed to take by the Chief Restructuring Officer, subject to approval of the Agent.

Financial Performance and Reporting

- (aa) the Obligors, AFFC and PMR shall continue to honour all reporting requirements as are presently provided for in the Credit Agreement and as are provided for in the DIP Credit Agreement, including any rights of the Agent/DIP Agent for additional reporting as it may be entitled to pursuant to the Credit Agreement, this Accommodation Agreement or the DIP Credit Agreement;
- (bb) without limiting the foregoing, each Committed Loan Notice from the Borrowers shall be accompanied by a report, in form and substance acceptable to the Agent, prepared by the Chief Restructuring Officer and reviewed by A&M, reflecting on a line-item basis (including, without limitation, sales, cash receipts, expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, Inventory levels and cash flow) each of Ben Moss' (on an individual basis) and the combined Borrowers' actual performance compared to the Cash Flows in respect of the Obligations (under the Credit Agreement and/or the DIP Credit Agreement, as applicable) for the applicable date and time period and on a cumulative basis for

the Forbearance Period and the percentage variance of actual results for sales, cash receipts, categorical expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, Inventory levels and cash flow from those reflected in the Cash Flows, along with the Chief Restructuring Officer's and A&M's explanation of such variance (a "**Variance Report**");

- (cc) the Borrowers shall not permit any negative variance from the Cash Flows of sales, cash receipts, expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, Inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and on a negative variance of Availability by more than 10%, tested weekly.
- (dd) the Cash Flows shall be updated at the end of their 13 week span in conjunction with any extension of the initial stay in the CCAA Proceedings and, for greater certainty, the updated Cash Flows will include the same line items as the current Cash Flow and the Borrowers shall continue to be subject to the same variance restrictions as in 4.2(cc); and
- (ee) the Obligors, AFFC or PMR shall immediately notify the Agent in writing of any material adverse change after the date hereof in the business or financial condition of the Obligors, AFFC, PMR, Utopia or Global Diamonds, or the occurrence of any Default, Event of Default or Forbearance Termination Event (other than the Existing Defaults), or any event which with notice or lapse of time or both would constitute an Event of Default or Forbearance Termination Event.

ARTICLE 5

FEES AND INTEREST RATES

The Borrowers, AFFC, PMR and the Agent agree that the provisions in this Article 5 shall remain in effect during the Forbearance Period, and thereafter until such time as the Obligations of the Obligors, AFFC and PMR under both the Credit Agreement and the DIP Credit Agreement have been indefeasibly satisfied in full.

5.1 Interest Rates

The Loans under the Credit Agreement, other than the Permitted Overadvance, and all other Obligations arising from or related to such Loans (including all Obligations outstanding as at the date hereof), until a Forbearance Termination Event as hereinafter defined, shall continue to bear interest at the Default Rate of interest provided under the Credit Agreement during the Forbearance Period. The Permitted Overadvance shall continue to bear interest at the rate of 3% per month. Loans under the DIP Facility will bear interest at the rate set out in the DIP Credit Agreement.

5.2 Forbearance Fee

The Borrowers will pay a forbearance fee (the "**Forbearance Fee**"), payable by the Borrowers to the Agent, for its own account, upon the Forbearance Termination Date, or upon any other date that any amount of the Obligations under the DIP Facility and Credit Facilities (other than scheduled installments on the term loans under the Credit Agreement) are permanently repaid or

reduced prior to the Forbearance Termination Date, in whole or in part, pursuant to the provisions hereof or thereof, equal to 3% of the aggregate Commitments under the Credit Agreement.

ARTICLE 6 OBLIGATIONS OF THE LENDER DURING FORBEARANCE PERIOD

6.1 Loan Availability

Subject to a Forbearance Termination Event, the Lenders shall continue to provide the Credit Facilities during the Forbearance Period: (a) in accordance with the Cash Flows until the Permitted Overadvance has been repaid, provided there is no negative variance in the projected Borrowing Base; and (b) thereafter, subject to the terms of the Credit Agreement (as amended hereby).

ARTICLE 7 FORBEARANCE TERMINATION EVENTS

7.1 Forbearance Termination Events

This Accommodation Agreement shall forthwith terminate upon the happening of anyone of the following events (each called an **"Forbearance Termination Event"**)

- (a) if at any time any Obligor or AFCC or PMR consents to or makes a general assignment for the benefit of creditors or takes advantage of, any insolvency, restructuring, reorganization or similar legislation, or take any corporate step in furtherance of the foregoing, or is declared bankrupt, or if a liquidator, trustee in bankruptcy, custodian, interim receiver, receiver or receiver and manager or other officer with similar powers is appointed with respect to any Obligor or AFCC or PMR or a related or affiliated company or any of its respective property, or any step in furtherance of any of the foregoing is taken by any Obligor or AFCC or PMR or a related or affiliated company, its respective directors or officers, affiliates or any third party (excluding the CCAA Proceedings, any order made therein or any actions taken in accordance with the Restructuring Plan);
- (b) if at any time any of the Borrowers seeks interim financing, outside the RISP, from a third party without prior approval from the Agent;
- (c) if the Obligors or AFCC or PMR fail to achieve any milestone in the RISP, including as specified in subsection 4.2(n) hereof;
- (d) if the Lead Borrower fails to make an application under the CCAA if and when required pursuant to subsection 4.2(l) hereof;

- (e) the occurrence of any Default or Event of Default under the Credit Agreement, the DIP Credit Agreement or any other Loan Document other than the Existing Defaults or any Default or Event of Default caused by:
 - (i) the commencement of the CCAA Proceedings as set out in the Restructuring Plan;
 - (ii) non-satisfaction of any pre-filing claims against Ben Moss (other than claims of the Agent that are to be paid in accordance with the terms of this Accommodation Agreement) where such claims are stayed in the CCAA Proceedings;
 - (iii) any actions taken in accordance with the Restructuring Plan;
 - (iv) disclaimers of contracts by Ben Moss in the CCAA Proceedings in accordance with the Restructuring Plan;
 - (v) the RISP;
 - (vi) any payments by Ben Moss on account of pre-filing critical supplier claims, where such payments have been set out in the Cash Flows and approved by the Monitor;
 - (vii) any failure to deliver Fiscal Year 2015 financial statements: (A) without a "going concern" or like qualification or exception as required under subsection 6.01(a) of the Credit Agreement; and (B) accompanied by the certificate of an Accounting Firm required under subsection 6.02(a) of the Credit Agreement;
 - (viii) any present or future breach of any representation, warranty, covenant or negative covenant in the Credit Agreement relating to Ben Moss, or any present or future Default or Event of Default (under the Credit Agreement) relating to Ben Moss, except, for greater certainty, where such a breach, Default or Event of Default is also a breach, default or event of default under the DIP Credit Agreement or this Accommodation Agreement.
- (f) the Obligors, AFFC or PMR default in the performance or observance of any covenant, term, agreement or condition of this Accommodation Agreement;
- (g) the Borrowers experience a negative aggregate variance from the Cash Flows of sales, cash receipts, expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, Inventory levels and cash flow by more than 10% initially on a rolling 2 week basis or on a cumulative basis or on a negative variance of Availability by more than 10%, tested weekly;
- (h) the Obligors, AFFC or PMR breach or default under the Restructuring Plan;

- (i) the Obligors, AFFC or PMR fail to maintain and keep current payments to any governmental authority holding any statutory deemed trust on their assets, which may result in any claim ranking in priority or *pari passu* to the claim of the Lenders or the DIP Lender, including remissions for deductions at source for employees, retail sales tax, goods and services tax and vacation pay;
- (j) any stay of proceedings provided in favour of Ben Moss by the Court or by operation of law shall have been terminated or lifted;
- (k) if any confirmation, representation or warranty given by the Obligors herein is untrue or incorrect, other than if rendered untrue or incorrect by the existence of the Existing Defaults, the commencement of the CCAA Proceedings, the RISP or actions taken pursuant to the Restructuring Plan;
- (l) if the Obligors, AFFC or PMR challenge in any manner the legality, validity, or enforceability this Accommodation Agreement, the Credit Agreement, the DIP Credit Agreement, any Security or any other Loan Documents or challenges any of the liabilities or obligations owing to the Lenders or the DIP Lender;
- (m) any failure by the Obligors, AFFC or PMR, on or before the last day of the Forbearance Period to pay the total then-outstanding Obligations to the Agent in full and without any claim, counterclaim, set-off, deduction or dispute of any kind;
- (n) the occurrence of any other event which, in the opinion of the Agent, acting reasonably and in good faith, may materially and adversely impact the priority or enforceability of the Lenders' or the DIP Lender's security held from the Obligors, AFFC and PMR or the realizable value of the collateral subject to such security; or
- (o) the expiry of the Forbearance Period.

Each Forbearance Termination Event shall be deemed an Event of Default pursuant to the Credit Agreement, the DIP Credit Agreement and the other Loan Documents. Upon the occurrence of a Forbearance Termination Event, the Agent shall be entitled to exercise in respect of the Existing Defaults or any other Event of Default all rights and remedies under this Accommodation Agreement, the Credit Agreement, the DIP Credit Agreement, the other Loan Documents or otherwise provided, however, that any exercise of remedies under or in connection with the DIP Credit Agreement or as against Ben Moss taken on or after the date of the Initial Order shall be subject to approval in the CCAA Proceedings and shall be requested upon two (2) Business Days' prior written notice to the Obligors and the Monitor (unless an event of default occurred under Subsections 8.01(a), (f), (g), (k) or (s) of the DIP Credit Agreement, in which case the remedies under Section 8.02 of the DIP Credit Agreement require one (1) Business Day's notice or no notice if the CCAA Proceedings are converted to any other form of liquidation or restructuring proceeding).

Without limiting the foregoing and effective upon the occurrence of a Forbearance Termination Event, the Obligors, AFFC and PMR hereby agree not to contest the appointment of A&M as receiver or interim receiver or the appointment of any other receiver/interim receiver selected by the Agent and the DIP Lender, pursuant to the BIA, over the Collateral of the corporate Obligors,

AFFC and PMR, by way of application by the Agent before the Court. Also upon the occurrence of a Forbearance Termination Event and upon the request of the Agent, the Lead Borrower agrees, and the Chief Restructuring Officer shall authorize the Lead Borrower to, within 2 days, seek an order of the Court in the CCAA Proceedings, in a form satisfactory to the Agent, acting reasonably, among other things, declaring the Lead Borrower to be a company to which the CCAA applies and imposing a stay of proceedings.

ARTICLE 8 GENERAL PROVISIONS

8.1 Release

Each of the Obligors, AFFC and PMR (collectively, the “**Releasors**”) hereby releases, remises, acquits and forever discharges the Agent, the Lenders, the DIP Agent, the DIP Lender, A&M and the Chief Restructuring Officer and each of their respective employees, agents, representatives, consultants, attorneys, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, Affiliates, subsidiary corporations, parent corporations, related corporate divisions, shareholders, participants and assigns (all of the foregoing hereinafter called the “**Released Parties**”), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, setoffs, recoupments, counterclaims, defences, damages and expenses of any and every character, known or unknown, suspected or unsuspected, direct and or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter arising, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and after the date hereof, and in any way directly or indirectly arising out of or in any way connected to this Accommodation Agreement, the Credit Agreement, the Security (and any enforcement relating thereto) or any of the other Loan Documents (all of the foregoing hereinafter called the “**Released Matters**”). Each Releasor acknowledges that the agreements in this Section are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters and constitute a complete waiver of any right of setoff or recoupment, counterclaim or any defence of any nature whatsoever with respect to the Released Matters or which might limit or restrict the effectiveness or scope of its agreements in this Section. Each Releasor represents and warrants that it has no knowledge of any claim by it against the Released Parties or of any facts, or acts or omissions of the Released Parties which on the date hereof would be the basis of a claim by the Releasors against the Released Parties which is not released hereby. Each Releasor represents and warrants that it has not purported to transfer, assign, pledge or otherwise convey any of its right, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full and complete release of all Released Matters. The Releasors have granted this release freely, and voluntarily and without duress.

8.2 Effect of this Agreement

Except as modified pursuant hereto, no other changes or modifications to the terms of the Indebtedness, the Loan Agreements or the other financing agreements are intended or implied and in all other respects the terms of the Indebtedness, the Loan Agreements and the other financing agreements are confirmed.

8.3 Cost and Expenses

The Obligors, AFFC and PMR hereby agree to pay to the Agent at any time and as often as the Agent may require acting reasonably, whether or not all or any of the transactions contemplated by this Accommodation Agreement are consummated, all reasonable fees and disbursements of the Agent chargeable pursuant to the Credit Agreement, this Accommodation Agreement or the DIP Credit Agreement, and its legal and financial advisors (or any supplemental legal or financial advisors retained by the Agent) engaged by it in connection with the preparation, negotiation, execution, delivery, administration, interpretation or enforcement of this Accommodation Agreement, the Credit Agreement, the other Loan Documents, the DIP Credit Agreement and any agreements delivered in connection with the transactions contemplated hereby or thereby, and monitoring of the CCAA Proceedings, including the RISP. Such fees and expenses shall be paid by the Agent and, following notice to the Lead Borrower, the Agent is hereby authorized and directed to debit the account of the Borrowers for the amount of such fees and expenses, subject to the Borrowers' right to have such fees and expenses, taxed, assessed or reviewed. Without limiting the generality of the foregoing, the Obligors, AFFC and PMR acknowledge and agree that the Agent shall have the right, at any time after the date hereof, to retain, within its sole discretion, upon reasonable terms and conditions, supplemental legal advisors and financial advisors of its sole choosing, and the reasonable costs and expenses thereof shall be paid by the Obligors, AFFC and PMR as provided herein.

8.4 Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Accommodation Agreement all at the expense of the Borrowers.

8.5 Binding Effect

This Accommodation Agreement shall be binding upon and enure to the benefit of each of the parties hereto and its heirs, executors, administrators, estate trustees, successors and permitted assigns.

8.6 Survival of Representations and Warranties

All representations and warranties made in this Accommodation Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Accommodation Agreement and such other document, and no investigation by the Agent or any closing shall affect the representations and warranties or the rights of the Agent to rely upon such representations and warranties.

8.7 No Novation

This Accommodation Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in the Credit Agreement or any of the other Loan Documents but same shall remain in full force and effect save to the extent same are amended by the provisions of this Accommodation Agreement.

8.8 Notice

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be given in writing and addressed as follows:

in the case of Salus:

Salus Capital Partners, LLC
197 First Avenue, Suite 250
Needham, Massachusetts 02494
USA

Attention: Kyle Shonak
Email: kshonak@saluscapital.com

In the case of the Obligors, AFFC or PMR:

c/o J.S.N. Jewellery Inc.
64 Jardin Drive, Unit 7
Concord, Ontario L4K 3P3

Attention: Naveed Manzoor
Email: naveed@faanadvisors.com

with a copy to the proposed Monitor:

Alvarez & Marsal Canada Inc.
200 Bay Street
Toronto, Ontario M5J 2J1

Attention: Adam Zalev and Alan Hutchens
Email: azalev@alvarezandmarsal.com and ahutchens@alvarezandmarsal.com

Any such notice shall be deemed to be sufficiently given if personally delivered or sent by facsimile transmission, and in each case shall be deemed to have been received by the other party on the same day on which it was delivered or sent by facsimile transmission, if such day is a business day, and, if not, on the next following business day.

8.9 Execution in Counterparts


This Agreement may be executed and delivered by facsimile and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

8.10 Governing Law

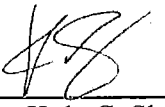
This Agreement shall be exclusively (without regard to any rules or principals relating to conflict of laws) governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

SALUS CAPITAL PARTNERS, LLC, as
Administrative Agent, Collateral Agent and
Lender

By: 
Name: Kyle C. Shonak
Title: President

SALUS CLO 2012-1, LTD.

By: 
Name: Kyle C. Shonak
Title: President
Authorized Signing Officer

J.S.N. JEWELLERY INC.

By: _____
Name:
Title:
Authorized Signing Officer

J.S.N. JEWELLERY UK LIMITED

By: _____
Name:
Title:
Authorized Signing Officer

J.S.N. JEWELLERY INC.By: Name: *Joseph Shilon*

Title:

Authorized Signing Officer

J.S.N. JEWELLERY UK LIMITEDBy: Name: *Joseph Shilon*

Title:

Authorized Signing Officer

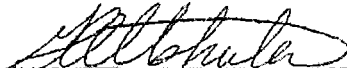
GMJ CORP.By: Name: *Joseph Shilon*

Title:


Authorized Signing Officer

**BEN MOSS JEWELLERS WESTERN
CANADA LTD.**By: Name: *Joseph Shilon***2373138 ONTARIO INC.**By: Name: *Joseph Shilon*

FOREVER JEWELLERY INC.

By: 
Name:

**ALWAYS & FOREVER FAMILY
COLLECTION INCORPORATED**

By: 
Name: Joseph Shilon

P.M.R. INC.

By: _____
Name:

Witness _____

)
)
)
)
)
)

JOSEPH SHILON

FOREVER JEWELLERY INC.

By: _____
Name: _____

**ALWAYS & FOREVER FAMILY
COLLECTION INCORPORATED**

By: _____
Name: _____

P.M.R. INC.

By: _____
Name: *Joseph Shilon*

James Kantor

Witness)
)
)
)
)
)

Joseph Shilon

JOSEPH SHILON

SCHEDULE "A"
SECURITY AND GUARANTEES

Canadian General Security Agreement dated as of July 18, 2013 and made by J.S.N. Jewellery Inc., 2373138 Ontario Inc., 6721657 Manitoba Ltd., Forever Jewellery Inc. and (pursuant to a Joinder to Canadian General Security Agreement entered into as of July 18, 2013) Ben Moss Jewellers Western Canada Ltd. in favour of Salus Capital Partners, LLC, as collateral agent.

(U.S.) Security Agreement dated as of July 18, 2013 between J.S.N. Jewellery Inc. and GMJ Corporation, a grantors, and Salus Capital Partners, LLC, as collateral agent.

(U.S.) Trademark Security Agreement dated as of July 18, 2013 and made by J.S.N. Jewellery Inc. in favour of Salus Capital Partners, LLC, as agent.

Collateral Assignment of Acquisition Documents entered into as of July 18, 2013 by J.S.N. Jewellery Inc. in favour of Salus Capital Partners, LLC.

Guarantee Agreement dated as of July 18, 2013 made by 2373138 Ontario Inc. and 6721657 Manitoba Ltd. in favour of Salus Capital Partners, LLC, as administrative agent and collateral agent and the other Credit Parties.

Debenture dated July 18, 2013 between by J.S.N. Jewellery UK Limited and Salus Capital Partners, LLC, as administrative agent and collateral agent.

Guarantee and Indemnity dated July 18, 2013 between J.S.N. Jewellery UK Limited and Salus Capital Partners, LLC, as administrative agent and collateral agent.

Charge Over Bank Account dated July 18, 2013 between J.S.N. Jewellery UK Limited and Salus Capital Partners, LLC, as administrative agent and collateral agent.

Guarantee Agreement dated as of July 18, 2013 and made by Forever Jewellery Inc. in favour of Salus Capital Partners, LLC, as administrative agent and collateral agent and the other Credit Parties, limited to an amount not exceeding the sum of all amounts due and payable by Forever Jewellery Inc. to J.S.N. Jewellery Inc.

Guarantee Agreement dated as of July 18, 2013 and made by Joseph Shilon in favour of Salus Capital Partners, LLC, as administrative agent and collateral agent and the other Credit Parties, limited in amount to \$3,000,000.

Intercreditor Agreement dated as of July 18, 2013 and made by Joseph Shilon in favour of Salus Capital Partners, LLC, as administrative agent.

Blocked Account Agreement made as of June 18, 2013 between Bank of Montreal, GMJ Corporation and Salus Capital Partners, LLC.

Blocked Account Agreement made as of June 18, 2013 between Bank of Montreal, J.S.N. Jewellery Inc. and Salus Capital Partners, LLC.

Blocked Account Agreement made as of June 18, 2013 between Bank of Montreal, Ben Moss Jewellers Western Canada Ltd. and Salus Capital Partners, LLC.

Blocked Account Agreement dated July 2, 2013 between Canadian Imperial Bank of Commerce, Ben Moss Jewellers Western Canada Ltd. and Salus Capital Partners, LLC.

Blocked Account Agreement dated as of June 17, 2013 between The Bank of Nova Scotia, Ben Moss Jewellers Western Canada Ltd. and Salus Capital Partners, LLC.

Accounts Agreement dated as of July 18, 2013 between Royal Bank of Canada, J.S.N. Jewellery Inc. and Salus Capital Partners, LLC.

Accounts Agreement (re Blocked Accounts) dated as of July 15, 2013 between Royal Bank of Canada, Ben Moss Jewellers Western Canada Ltd. and Salus Capital Partners, LLC.

Accounts Agreement (re Disbursement Accounts) dated as of July 15, 2013 between Royal Bank of Canada, Ben Moss Jewellers Western Canada Ltd. and Salus Capital Partners, LLC.

Deposit Account Control Agreement made as of June 26, 2013 by and among the Toronto Dominion Bank, Ben Moss Jewellers Western Canada Ltd. and Salus Capital Partners, LLC.

SCHEDULE "B"
EXISTING OBLIGATIONS

SCHEDULE "C"
CASH FLOWS

[A&M to provide]

SCHEDULE "D"
FORM OF ASSIGNMENT, POSTPONEMENT, WAIVER AND ESTOPPEL

SCHEDULE "E"
RISP

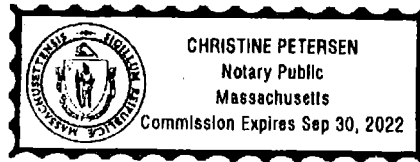
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EXHIBIT “H”

Attached is Exhibit "H" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



SUPER PRIORITY DIP CREDIT AGREEMENT

Dated as of May 16, 2016

among

BEN MOSS JEWELLERS WESTERN CANADA LTD.
as the Borrower

and

THE GUARANTORS NAMED HEREIN

and

SALUS CAPITAL PARTNERS, LLC
as Administrative Agent and Collateral Agent

and

THE OTHER LENDERS PARTY HERETO

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS	1
1.01 Defined Terms	1
1.02 Other Interpretive Provisions	37
1.03 Accounting Terms Generally	38
1.04 Rounding.....	39
1.05 Times of Day.....	39
1.06 Currency Equivalents Generally	39
1.07 Currency Matters	39
1.08 Judgment Currency	39
ARTICLE 2 THE COMMITMENTS AND BORROWINGS	40
2.01 Committed Revolving Loans; Reserves.....	40
2.02 Borrowings of Committed Revolving Loans	41
2.03 [Reserved]	42
2.04 [Reserved]	42
2.05 Repayments and Prepayments	43
2.06 Termination or Reduction of Commitments	44
2.07 Repayment of Loans	44
2.08 Interest.....	44
2.09 Fees	46
2.10 Computation of Interest and Fees	46
2.11 Evidence of Debt.....	46
2.12 Payments Generally; Agent's Clawback	47
2.13 Sharing of Payments by Lenders	49
2.14 Settlement Amongst Lenders.....	49
2.15 [Reserved]	50
2.16 Defaulting Lenders.....	50
ARTICLE 3 TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER.....	52
3.01 Taxes	52
3.02 [Reserved]	53

TABLE OF CONTENTS
(continued)

	Page
3.03 [Reserved]	53
3.04 Increased Costs; Reserves on Loans	53
3.05 Compensation for Losses	54
3.06 Mitigation Obligations; Replacement of Lenders	54
3.07 Survival	55
3.08 Reserved	55
ARTICLE 4 CONDITIONS PRECEDENT TO BORROWINGS	55
4.01 Conditions of Initial Borrowing	55
4.02 Conditions to all Borrowings	58
ARTICLE 5 REPRESENTATIONS AND WARRANTIES	59
5.01 Existence, Qualification and Power	59
5.02 Authorization; No Contravention	60
5.03 Governmental Authorization; Other Consents	60
5.04 Binding Effect	60
5.05 Financial Statements; No Material Adverse Effect	61
5.06 Litigation	62
5.07 No Default	62
5.08 Ownership of Property; Liens	62
5.09 Environmental Compliance	63
5.10 Insurance	64
5.11 Taxes	64
5.12 Pension Plans	64
5.13 Subsidiaries; Equity Interests	64
5.14 [Reserved]	65
5.15 Disclosure	65
5.16 Compliance with Laws	65
5.17 Intellectual Property; Licenses, Etc	65
5.18 Labour Matters	65
5.19 Security Documents	66
5.20 Transfers	67

TABLE OF CONTENTS
(continued)

	Page
5.21 Deposit Accounts; Credit Card Arrangements	67
5.22 Brokers	67
5.23 Customer and Trade Relations	67
5.24 Material Contracts	67
5.25 Casualty	68
5.26 [Reserved]	68
5.27 Personally Identifiable Information	68
5.28 Anti-Bribery/Anti-Corruption	68
5.29 The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)	68
ARTICLE 6 AFFIRMATIVE COVENANTS	69
6.01 Financial Statements	69
6.02 Certificates; Other Information	69
6.03 Notices	71
6.04 Payment of Obligations	72
6.05 Preservation of Existence, Etc	73
6.06 Maintenance of Properties	73
6.07 Maintenance of Insurance	73
6.08 Compliance with Laws	75
6.09 Books and Records; Accountants	75
6.10 Inspection Rights	75
6.11 Use of Proceeds	76
6.12 Additional Loan Parties	76
6.13 Cash Management	77
6.14 Information Regarding the Collateral	79
6.15 Physical Inventories	80
6.16 Environmental Laws	80
6.17 Further Assurances	81
6.18 Compliance with Terms of Leaseholds	82
6.19 Material Contracts	82

TABLE OF CONTENTS
(continued)

	Page
6.20 Restructuring Plan.....	82
6.21 Compliance with Laws	82
6.22 Extension Order	82
ARTICLE 7 NEGATIVE COVENANTS	83
7.01 Liens.....	83
7.02 Investments	83
7.03 Indebtedness.....	83
7.04 Fundamental Changes.....	83
7.05 Dispositions.....	83
7.06 Restricted Payments.....	83
7.07 Prepayments of Indebtedness.....	84
7.08 Change in Nature of Business.....	84
7.09 Transactions with Affiliates	84
7.10 Burdensome Agreements	84
7.11 Use of Proceeds.....	85
7.12 Amendment of Material Documents.....	85
7.13 Fiscal Year	85
7.14 Changes in Name or Jurisdiction	85
7.15 Deposit Accounts; Credit Card Processors	85
7.16 [Financial Covenants – Intentionally deleted]	85
7.17 DIP Loan Restrictions.....	85
7.18 Pension Plans	86
ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES.....	86
8.01 Events of Default	86
8.02 Remedies Upon Event of Default	91
8.03 Application of Funds.....	93
ARTICLE 9 THE AGENT	94
9.01 Appointment and Authority	94
9.02 Rights as a Lender.....	94
9.03 Exculpatory Provisions	95

TABLE OF CONTENTS
(continued)

	Page
9.04 Reliance by Agent.....	96
9.05 Delegation of Duties	96
9.06 Resignation of Agent	96
9.07 Non-Reliance on Agent and Other Lenders.....	97
9.08 No Other Duties, Etc.....	97
9.09 Agent May File Proofs of Claim.....	97
9.10 Collateral and Guarantee Matters	98
9.11 Notice of Transfer.....	99
9.12 Reports and Financial Statements	99
9.13 Agency for Perfection.....	100
9.14 Indemnification of Agent.....	100
9.15 Relation among Lenders	100
9.16 Co-Syndication Agents; Documentation Agent and Co-Lead Arrangers.....	100
9.17 [Reserved]	100
ARTICLE 10 MISCELLANEOUS	101
10.01 Amendments, Etc.....	101
10.02 Notices; Effectiveness; Electronic Communications.....	103
10.03 No Waiver; Cumulative Remedies	104
10.04 Expenses; Indemnity; Damage Waiver.....	105
10.05 Payments Set Aside.....	106
10.06 Successors and Assigns.....	107
10.07 Treatment of Certain Information; Confidentiality.....	111
10.08 Right of Setoff.....	111
10.09 Counterparts; Integration; Effectiveness.....	112
10.10 Survival.....	112
10.11 Severability	113
10.12 Replacement of Lenders	113
10.13 Governing Law; Jurisdiction; Etc	114
10.14 Waiver of Jury Trial.....	115
10.15 No Advisory or Fiduciary Responsibility	115

TABLE OF CONTENTS
(continued)

	Page
10.16 Anti-Money Laundering Legislation	116
10.17 USA PATRIOT Act Notice	117
10.18 Economic Sanction Laws.....	117
10.19 Time of the Essence	117
10.20 Press Releases	117
10.21 Additional Waivers	118
10.22 Guarantee	119
10.23 No Strict Construction	125
10.24 Attachments	125
10.25 Amendment and Restatement	125
SCHEDULE 2.01 COMMITMENTS AND APPLICABLE PERCENTAGES	130
SCHEDULE 5.01 LOAN PARTIES ORGANIZATIONAL INFORMATION	131
SCHEDULE 5.05 SUPPLEMENT TO INTERIM FINANCIAL STATEMENTS	132
SCHEDULE 5.06 LITIGATION	133
SCHEDULE 5.08(B)(1) OWNED REAL ESTATE	134
SCHEDULE 5.08(B)(2) LEASED REAL ESTATE.....	135
SCHEDULE 5.09 ENVIRONMENTAL MATTERS	143
SCHEDULE 5.10 INSURANCE.....	144
SCHEDULE 5.12 PENSION PLANS.....	146
SCHEDULE 5.13 SUBSIDIARIES; OTHER EQUITY INVESTMENTS; EQUITY INTERESTS IN THE BORROWER.....	147
SCHEDULE 5.17 INTELLECTUAL PROPERTY MATTERS.....	148
SCHEDULE 5.18 COLLECTIVE BARGAINING AGREEMENTS	149
SCHEDULE 5.21(A) DDA'S.....	150
SCHEDULE 5.21(B) CREDIT CARD ARRANGEMENTS.....	151
SCHEDULE 5.22 BROKER FEES	152
SCHEDULE 5.24 MATERIAL CONTRACTS	153
SCHEDULE 6.02 FINANCIAL AND COLLATERAL REPORTING.....	154
SCHEDULE 6.20 RISP	155
SCHEDULE 7.01 EXISTING LIENS	156

TABLE OF CONTENTS
(continued)

	Page
SCHEDULE 7.02 EXISTING INVESTMENTS.....	168
SCHEDULE 7.02(A) INVESTMENT POLICY.....	169
SCHEDULE 7.03 EXISTING INDEBTEDNESS	170
SCHEDULE 7.09 AFFILIATE TRANSACTIONS	171
SCHEDULE 10.02 AGENT'S OFFICE; CERTAIN ADDRESSES FOR NOTICES.....	174
EXHIBIT A FORM OF COMMITTED LOAN NOTICE	175
EXHIBIT B RESERVED.....	176
EXHIBIT C FORM OF REVOLVING NOTE.....	177
EXHIBIT D FORM OF COMPLIANCE CERTIFICATE	178
EXHIBIT E FORM OF ASSIGNMENT AND ASSUMPTION.....	180
EXHIBIT F FORM OF BORROWING BASE CERTIFICATE	185
EXHIBIT G FORM OF CREDIT CARD NOTIFICATION	186
EXHIBIT H FORM OF DDA NOTIFICATION.....	188

SUPER PRIORITY DIP CREDIT AGREEMENT

THIS SUPER PRIORITY DIP CREDIT AGREEMENT ("Agreement") is entered into as of May 16, 2016

AMONG:

BEN MOSS JEWELLERS WESTERN CANADA LTD.,
a company existing under the laws of the Province of Manitoba (the "**Borrower**"),

the Persons listed on the signature page hereto and executing this Agreement as a **Guarantor**
(collectively the "**Guarantors**"),

each Lender from time to time party hereto, and

SALUS CAPITAL PARTNERS, LLC,
as Administrative Agent and Collateral Agent

The Borrower has filed or intends on filing for protection under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA Proceedings**") and obtaining an initial order by the Ontario Superior Court of Justice, Commercial List sitting in Toronto (the "**Court**"). The Borrower continues to operate its business and manage its properties as a debtor-in-possession company. The Borrower has requested that the Lenders continue to extend credit to it and to provide a senior secured super priority revolving debtor in possession credit facility, and certain other financial accommodations of credit, in each case on the terms and conditions set forth herein.

All Obligations of the Loan Parties to the Lenders hereunder and under the other Loan Documents shall be full recourse to each of the Loan Parties.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"**Acceptable Document of Title**" means, with respect to any Inventory, a tangible, negotiable bill of lading, negotiable cargo receipt or other "*document of title*" (as defined in the PPSA) that (a) is issued by a common carrier or consolidator which is not an Affiliate of any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of or consigned to a Loan Party or to the order of the Agent, (c) is not subject

to any Lien (other than in favour of the Agent), and (d) is on terms otherwise reasonably acceptable to the Agent. The Loan Parties will use commercially reasonable efforts to have the Agent named as a notify party on all such negotiable bills of lading, negotiable cargo receipts or other documents of title.

"Accommodation Payment" as defined in Section 10.22(a).

"Account" means "*accounts*" as defined in the PPSA and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, or (e) arising out of the use of a credit or charge card or information contained on or for use with the card.

"Accounting Firm" means a nationally-recognized chartered accountant firm acceptable to Agent and independent of the Loan Parties.

"ACH" means automated clearing house transfers.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

"Affiliate" means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified (and if that Person is an individual, including any member of the Family Group, (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding ten percent (10%) or more of any class of the Equity Interests of that Person, and (iv) any other Person ten percent (10%) or more of any class of whose Equity Interests is held directly or indirectly by that Person.

"Agent" means Salus Capital Partners, LLC, in its capacity as Administrative Agent and Collateral Agent under any of the Loan Documents, or any successor thereto in such capacities.

"Agent Parties" shall have the meaning specified in Section 10.02(d).

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders.

"Aggregate Revolving Commitments" means the Revolving Commitments of all the Revolving Lenders. As of the Closing Date, the Aggregate Revolving Commitments are the USD\$ of the Equivalent Amount of C\$8,000,000.

"Agreement" means this Super Priority DIP Credit Agreement as the same may be amended, restated, supplemented, replaced, extended or modified from time to time.

"Allocable Amount" has the meaning specified in Section 10.22(a).

"AML Program" has the meaning specified in Section 5.29.

"Applicable Lenders" means the Required Lenders, the Required Revolving Lenders, all affected Lenders, or all Lenders, as the context may require.

"Applicable Percentage" means, in each case as the context requires, (a) with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender's Revolving Commitment at such time, or (b) with respect to all Lenders at any time, the percentage of the sum of the Aggregate Revolving Commitments represented by the sum of such Lender's Revolving Commitment and the outstanding principal balance of such Lender's at such time, in each case as the context provides. If the commitment of each Lender to make Loans have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender shall be determined based on the Applicable Percentage of such Revolving Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Appraised Value" means, with respect to Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Eligible Inventory as set forth in the inventory stock ledger of the Borrower, which value shall be determined from time to time by an appraisal undertaken by an independent appraiser engaged by the Agent.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

"Approved Vendor" means a Vendor which (a) is located in any country acceptable to the Agent in its Permitted Discretion, (b) has received, or arrangements satisfactory to the Agent and Monitor have been made for, the timely payment or performance of all obligations owed to it by the Loan Parties, and (c) has not asserted any reclamation, repossession, diversion, stoppage in transit, revendication, Lien or title retention or unpaid suppliers' rights in respect of such Inventory.

"Arranger" means Salus Capital Partners, LLC, in its capacity as sole lead arranger and sole book manager.

"Assignee Group" means two or more assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of **Exhibit E** or any other form approved by the Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"Audited Financial Statements" means the audited Combined balance sheet of the Financial Statement Parties for the Fiscal Year ended March, 2015, and the related combined statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year of the Financial Statement Parties, including the notes thereto.

"Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

- (a) the lesser of:
 - (i) BM Borrowing Base, less the amount advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extension of credit stated to be required under and as set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the BM Budget for such amount; and
 - (ii) the Maximum Revolving Loan Amount; minus
- (b) the Total Revolver Outstandings.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower shall certify to the Agent and it shall be a condition to any advance hereunder that there is no "Availability" under and as defined in the J.S.N. Credit Agreement, the "Permitted Overadvance" under the J.S.N. Credit Agreement is being permanently reduced in accordance with the Budget pursuant to Section 6.13 hereof, and the Borrower shall certify to the Agent that all accounts payable (including, without limitation, all Post-Petition rents and all amounts which are the subject matter of the Administrative Charge and the Directors' Charge) and Post-Petition Taxes and Priority Payables are not in arrears and are being paid on a timely basis in accordance with the Budget (other than amounts disputed in good faith by appropriate proceedings and for which appropriate Reserves have been established).

"Availability Period" means the period from and including the Closing Date to the Termination Date.

"Availability Reserves" means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent's ability to realize upon the Collateral and receive repayment in full therefrom, including any and all costs, fees and expenses, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent's Permitted Discretion, (but are not limited to) Rent Reserves and reserves based on: (i) customs duties, and other costs to release Inventory which is being imported into Canada; (ii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, goods and services, harmonized sales, municipal, and other Taxes which may have priority over the interests of the Agent in the Collateral; (iii) salaries, wages and benefits due to employees of any Borrower and any employee service deductions, workers' compensation, pension fund or *Wage Earner Protection Act* (Canada) obligations; (iv) Customer Credit Liabilities; (v) Customer Deposits; (vi) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals; (vii) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral; (viii) amounts due to vendors on account of consigned goods; (ix) Cash Management Reserves; (x) royalties payable in respect of licensed merchandise; (xi) claims of any pension regulator or any pension claimant in respect of pension entitlements which, upon a realization upon the Collateral, may represent a Claim on the Collateral or its proceeds which ranks prior to the Liens arising under the Loan Documents; and (xii) Inventory that is subject to the rights of suppliers under Section 81.1 of the *Bankruptcy and Insolvency Act* (Canada).

"Average Daily Availability" means, for any period of determination, an amount equal to the sum of Availability for each day of such period divided by the actual number of days in such period, as determined by the Agent, which determination shall be conclusive absent manifest error.

"Bank Products" means any services or facilities provided to any Loan Party by the Agent or any of its Affiliates (but excluding Cash Management Services) including, without limitation, on account of (a) Swap Contracts, (b) merchant services constituting a line of credit, and (c) supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases.

"Benefit Plan" means any plan, fund, program, or policy, whether oral or written, formal or informal, funded or unfunded, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability or life insurance, under which any

Loan Party has any liability with respect to any employee or former employee, but excluding any Pension Plan.

"Blocked Account" has the meaning provided in Section 6.13(a)(ii).

"Blocked Account Agreement" means with respect to an account established by a Loan Party, an agreement, in form and substance satisfactory to the Agent, subjecting such account to Liens in favour of the Agent and whereby the bank maintaining such account agrees to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

"Blocked Account Bank" means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDA's are deposited and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"BM Borrowing Base" has the meaning provided in the definition of "*Borrowing Base*" below.

"BM Budget" has the meaning provided in the definition of "*Budget*" below.

"Borrower Materials" means any Borrowing Base Certificate, information and reports including, in respect of the RISP and the Forbearance Agreement, the Variance Report, an estimate of potential liabilities in respect of any Court Charges, financial statements and other materials delivered by the Borrower hereunder, as well as other Reports and information provided by the Agent to the Lenders.

"Borrower" has the meaning specified in the introductory paragraph hereto and includes its successors and assigns.

"Borrowing" means a Revolving Credit Borrowing.

"Borrowing Base" means, at any time of calculation, the Borrowing Base of the J.S.N. Borrowers under the J.S.N. Credit Agreement (but for greater certainty, such Borrowing Base thereunder and hereunder, shall only include in respect of the Borrower an amount equal to (without duplication)) (the **"BM Borrowing Base"**):

- (a) with respect to finished goods jewellery inventory which is Eligible Inventory, 95% of the Appraised Value of such Eligible Inventory; minus
- (b) the amount of all Availability Reserves at such time.

"Borrowing Base Certificate" means a certificate substantially in the form of **Exhibit F** hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time) in respect of the Borrower on an individual basis and the Combined Borrowing Base under the J.S.N. Credit Agreement in respect of the J.S.N. Borrowers as approved by the Monitor and executed and certified as accurate and complete by a

Responsible Officer of the Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

"Budget" means the thirteen (13) week cash flow of the Borrower filed with the Court in connection with the Initial Order, and any subsequent thirteen week cash flow projections furnished pursuant to the CCAA Proceedings (the **"BM Budget"**), and the Combined 13 week cashflows of the J.S.N. Borrowers, together with any and all backup and detail tabs in relation to the Budget summary in the same form as previously provided to the Agent and in each case, in substance satisfactory to the Monitor and the Agent, reflecting on a line item basis, among other things, sales, cash receipts and disbursements, inventory and receivable levels, inventory receipt/purchase levels, categorical expenditures, the BM Borrowing Base, the Combined Borrowing Base of the J.S.N. Borrowers under the J.S.N. Credit Agreement Availability hereunder, *"Availability"* and the outstanding amount of the *"Permitted Overadvance"* (each under and as defined in the J.S.N. Credit Agreement) for the subject period (both hereunder and under the J.S.N. Credit Agreement), which may be amended and modified solely with the recommendation of the Monitor and the written consent of the Agent.

"Business" means the business carried on by the Borrower on the Closing Date, being the business of the retail sale of jewellery and related products.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the City of Toronto, Ontario or Boston, Massachusetts.

"Canadian Dollars", "Dollars", "C\$" or "\$" shall mean the lawful currency of Canada.

"Capital Expenditures" means, with respect to any Person for any period, (a) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), and net of any tenant allowances in each case that are (or should be) set forth as capital expenditures in a combined cash flow supplement of such Person for such period, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by a Person during such period.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateral Account" means any deposit account, whether interest bearing or non-interest bearing, established by one or more of the Loan Parties in the name of the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance herewith.

"Cash Management Bank" means a bank or other financial institution as approved by Agent in its sole discretion.

"Cash Management Reserves" means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

"Cash Management Services" means any cash management services or facilities provided to any Loan Party by the Cash Management Bank or any of its Affiliates, including, without limitation: (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit or debit cards, (d) credit card processing services, and (e) purchase cards.

"CCAA" means the *Companies' Creditors Arrangement Act* (Canada).

"CCAA Proceedings" has the meaning assigned in the preamble to this Agreement.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, however, for the purposes of this Agreement: (x) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any central bank or other Governmental Authority, in each case pursuant to Basel III, shall in each case be deemed to be a "*Change in Law*", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

- (a) the Family Group shall cease to own and control legally and beneficially (free and clear of all Liens), either directly or indirectly (including through Whitpay Inc.), equity securities in J.S.N., Always & Forever Family Collection Incorporated, Global Diamonds (G.D.) Ltd., Utopia Jewellery Co., Utopia Diamond Inc., GMJ Corp. and Forever Jewellery Inc. representing more than seventy-five percent (75%) of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of such Persons on a fully-diluted basis (and taking into account all such securities that the Family Group has the right to acquire pursuant to any option right (as defined in clause (b) below));
- (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of

J.S.N., Always & Forever Family Collection Incorporated, Global Diamonds (G.D.) Ltd., Utopia Jewellery Co., Utopia Diamond Inc., GMJ Corp. and Forever Jewellery Inc. cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any Person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

- (c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of J.S.N., Always & Forever Family Collection Incorporated, Global Diamonds (G.D.) Ltd., Utopia Jewellery Co., Utopia Diamond Inc., GMJ Corp. and Forever Jewellery Inc., or control over the Equity Interests of such Persons entitled to vote for members of the board of directors or equivalent governing body of such Persons on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing twenty-five percent (25%) or more of the combined voting power of such securities; or
- (d) any "*change in control*" or "*sale*" or "*disposition*" or similar event as defined in any Organizational Document of any Loan Party or in any Material Contract, or any document governing Material Indebtedness of any Loan Party, shall occur;
- (e) the J.S.N. fails at any time to own, directly or indirectly, one-hundred percent (100%) of the Equity Interests of each other Loan Party (other than Always & Forever Family Collection Incorporated and GMJ Corp. and Forever Jewellery Inc.) free and clear of all Liens (other than the Liens in favour of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents; or
- (f) a Responsible Officer as of the Closing Date shall for any reason either cease to hold such office or be actively engaged in the day-to-day

management of the Borrower, unless (i) a successor with similar industry experience, reputation and expertise is appointed within six (6) months of such cessation and such successor is appointed following good faith consultation with the Agent or (ii) if such successor does not have (or Agent shall reasonably determine such successor does not have) similar industry experience, reputation or expertise, such successor is appointed with the consent of the Agent (such consent not to be unreasonably withheld, conditioned or delayed) within six (6) months of such cessation.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Collateral" means any and all *"Collateral"* as defined in any applicable Security Document, Loan Document or Pre-Petition Loan Document or the Initial Order, including any cash proceeds of any sales of Inventory or other assets of the Borrower wherever located, deposited or held, and all other property that is or is intended under the terms of the Security Documents or the Initial Order to be subject to Liens in favour of the Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party and any financier or Person holding a Lien in respect of such Real Estate, pursuant to which such Person (i) acknowledges the Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

"Combined" means, when used to modify a financial term, test, statement or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the combination, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Commitment" means, as to each Lender, such Lender's Revolving Commitment.

"Committed Loan Notice" means a notice of a Revolving Credit Borrowing, pursuant to Section 2.02, which shall be substantially in the form of **Exhibit A**.

"Committed Revolving Loan" has the meaning specified in Section 2.01.

"Compliance Certificate" means a certificate substantially in the form of **Exhibit D**.

"Concentration Account" has the meaning provided in Section 6.13(c).

"Consent" means actual consent given by a Lender from whom such consent is sought; or the passage of 1 Business Day from receipt of written notice to a Lender from the

Agent of a proposed course of action to be followed by the Agent without such Lender giving the Agent written notice of that Lender's objection to such course of action.

"Consultant Costs" means the costs and expenses associated with the appointment of any consultant contemplated herein or in the Forbearance Agreement, together with any other third party costs associated with business evaluations or inventory management conducted on behalf of any of the Loan Parties to determine the Borrowing Base and assist it with valuing and liquidating and transporting Inventory, negotiation of real property lease concessions and store closures from time to time.

"Contractual Obligation" means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

"Cost" means the lower of cost or market value (determined as the cost equivalent of the lowest ticketed or promotional price at which such Inventory is offered to the public after all mark-downs (whether or not such price is reflected on such Person's accounting records)) of Inventory, based upon the J.S.N. Borrower's accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the J.S.N. Borrowers, the J.S.N. Borrowers' purchase journals or the J.S.N. Borrowers' stock ledger. **"Cost"** does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the J.S.N. Borrowers' calculation of cost of goods sold.

"Court" has the meaning assigned in the preamble to this Agreement.

"Court Charges" collectively means the charges established under the Initial Order including the DIP Charge (as defined herein), the Administration Charge and Directors' Charge (each as defined and/or contemplated in the Initial Order).

"Credit Card Issuer" shall mean any Person (other than Borrower or other Loan Party) who issues or whose members issue credit or debit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa Canada Inc. Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc. and Novus Services, Inc. and other issuers approved by the Agent in its Permitted Discretion.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's

sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Notifications” has the meaning provided in Section 6.13(a)(i).

“Credit Party” or **“Credit Parties”** means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) the Arranger, (iv) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (v) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vi) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

“Credit Party Expenses” means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) any syndication or participation of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of the rights of the Credit Parties in connection with this Agreement or the Loan Documents or efforts to monitor, preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring, refinancing, sale, investment, or negotiations in respect of same or any Obligations; (b) all customary fees and charges (as adjusted from time to time) of the Agent with respect to access to online Loan information, the disbursement of funds (or the receipt of funds) to or for the account of Loan Parties (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith; and (c) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent or an Affiliate of the Agent.

“CRO” has the meaning provided in the definition of *“Initial Order”* below.

“Customer Credit Liabilities” means at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrower entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, (b) outstanding merchandise credits of the Borrower, and (c) liabilities in connection with frequent shopping programs of the Borrower.

“Customer Deposits” means at any time, the aggregate amount at such time of (a) deposits made by customers with respect to the purchase of goods or the performance of services and (b) layaway obligations of the Borrower.

"Customs Broker/Carrier Agreement" means an agreement in form and substance satisfactory to the Agent among any J.S.N. Borrower, a customs broker, freight forwarder, consolidator or carrier, and the Agent, in which the customs broker, freight forwarder, consolidator or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory solely as directed by the Agent.

"DDA" means each chequing, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"DDA Notification" has the meaning provided therefor in Section 6.13(a)(iii).

"Debtor Relief Laws" means the *Companies Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada), each applicable governing corporate statute providing for arrangements and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of Canada (or any provincial or territorial subdivision thereof) or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means the applicable rate of interest plus three percent (3%) per annum.

"Defaulting Lender" means any Revolving Lender or Participant that (a) has failed to fund any portion of the Committed Revolving Loans required to be funded by it hereunder or any amount under the J.S.N. Credit Agreement within one (1) Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Agent or any other Revolving Lender any other amount required to be paid by it hereunder or under the J.S.N. Credit Agreement within one (1) Business Day of the date when due, (c) has failed or refused to abide by any of its obligations under this Agreement or under the J.S.N. Credit Agreement, or (d) has been deemed insolvent or become the subject of a bankruptcy, receivership or insolvency proceeding.

"Deteriorating Lender" means any Defaulting Lender or any Revolving Lender as to which (a) the Agent has a good faith belief that such Revolving Lender has defaulted in fulfilling its obligations under one or more other participations or syndicated credit facilities, or (b) a Person that Controls such Revolving Lender has been deemed insolvent or become the subject of a bankruptcy, receivership, insolvency or similar proceeding.

"DIP Charge" means the super priority debtor in possession charge to secure the DIP Obligations and which for greater certainty, shall not secure any Pre-Petition Liabilities.

"DIP Obligations" means the Revolving Commitments hereunder.

"Disposition" or **"Dispose"** means the sale, transfer, license, lease, return of any Collateral to any vendor to offset an account payable or other disposition (whether in one transaction or in a series of transactions, and including any sale and leaseback transaction and any sale, transfer, license or other disposition) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Eligible Inventory" means, as of the date of determination of the Borrowing Base or the BM Borrowing Base, without duplication, items of jewellery Inventory of Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrower's business and deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base or the BM Borrowing Base, in each case that, except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Borrower herein, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, the following items of Inventory shall not be included in Eligible Inventory:

- (a) Inventory that is not solely owned by Borrower or Borrower does not have good and valid title thereto;
- (b) Inventory that is leased by or is on consignment to Borrower or which is consigned by Borrower to a Person which is not a Loan Party;
- (c) Inventory that is not located at a location that is owned or leased by Borrower, except (i) Inventory in transit between such owned or leased locations or locations which meet the criteria set forth in clause (ii) below, or (ii) to the extent that the Borrower have furnished the Agent with (A) any PPSA or UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to the Agent;
- (d) Inventory that is located in a distribution center leased by Borrower unless the applicable lessor and any financier or Person holding a Lien in respect of such location (if applicable) has delivered to the Agent a Collateral Access Agreement, or the Agent has implemented Reserves for such location;
- (e) Inventory that is comprised of goods which are (i) damaged, defective, "seconds," or otherwise unmerchantable, (ii) to be returned to the vendor, (iii) customer items, work in process, raw materials, or that constitute

samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) seasonal in nature and which have been packed away for sale in the subsequent season, (v) not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, (vi) bill and hold goods, or (vii) otherwise not salable above cost;

- (f) Inventory that is not subject to a perfected first priority security interest (subject to the Court Charges) in favour of the Agent;
- (g) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof;
- (h) Inventory that has been sold but not yet delivered or as to which Borrower has accepted a deposit;
- (i) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement or distribution with any third party, which restricts the sale of such Inventory unless Agent is in receipt of a consent satisfactory to it or Agent has implemented Reserves, from which Borrower has received notice of a dispute in respect of any such agreement; or
- (j) Inventory which the Agent determines in its Permitted Discretion to be unacceptable for borrowing.

"Environmental Laws" means any and all Federal, provincial, territorial, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of human health, safety, the workplace, the environment or natural resources or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the PPSA.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Equivalent Amount" means, on any date of determination, with respect to obligations or valuations denominated in one currency (the **"first currency"**), the amount of another currency (the **"second currency"**) which would result from the Agent converting the first currency into the second currency at approximately 12:00 noon on such day in accordance with Agent's customary practice for commercial loans being administered by it or at such other rate as may have been agreed in writing between Borrower and Agent.

"Event of Default" has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

"Excluded Taxes" means, with respect to the Agent, any Lender or any other recipient (in this definition, (a **"recipient"**) of any payment to be made by or on account of any obligation of the Loan Parties hereunder, income or franchise Taxes imposed on (or measured by) such recipient's taxable income or capital Taxes imposed on (or measured by) such recipient's taxable capital, in each case by Canada, or by the jurisdiction under the applicable Laws of which such recipient is organized or in which its principal office is located.

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including (i) payments received by any Loan Party pursuant to any acquisition documents relating to the Borrower, including any deferred payment, any purchase price adjustments that result in a payment by any seller to any Loan Party, and any indemnity payments made by any Seller), and (ii) tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), expropriation and condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments related to any such acquisition.

"Facility Guarantee" means any Guarantee made by a Guarantor in favour of the Agent and the other Loan Parties, in form and substance reasonably satisfactory to the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

"Family Group" means (i) Mr. Joseph Shilon and his spouse, parents, siblings, children, grandchildren, nephews, nieces, heirs, legatees, lineal descendants, executors,

administrators, and other representatives, and (ii) any trust, family partnership or similar investment entity of which any of the foregoing Persons are trustee(s), managing member(s), managing partner(s) or similar officer(s) and/or that is for the benefit of any of the foregoing Persons as long as one or more of such Persons has the exclusive or joint right to control the voting and disposition of securities held by such trust, family partnership or similar investment entity.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of $\frac{1}{100}$ of 1%) charged to money center banks on such day on such transactions as determined by the Agent.

"Financial Statement Parties" means the Borrower and each of the corporate Guarantors hereunder (other than Forever Jewellery Inc., Always & Forever Family Collection Incorporated and P.M.R. Inc).

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the last day of each calendar month in accordance with the fiscal accounting calendar of the Borrower.

"Fiscal Year" means any period of twelve (12) consecutive months ending on March 31 of any calendar year.

"Forbearance Agreement" means the accommodation agreement amongst, *inter alia*, the Agent, the Borrower and the other Loan Parties dated with effect as of the date hereof.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means in relation to any Person at any time, (a) until such time as such Person adopts the International Financial Reporting Standards, accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants or its successor, applied on a basis consistent with the most recent audited financial statements of such Person (except for changes approved by the auditors of such Person), and (b) after such time as such Person adopts the International Financial Reporting Standards, such International Financial Reporting Standards.

"Governmental Authority" means any nation or government, or of any political subdivision thereof, whether provincial, territorial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising

executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" or **"Guaranty"** means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the **"primary obligor"**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term *"Guarantee"* as a verb has a corresponding meaning.

"Guarantor" has the meaning specified in the introductory paragraph hereto and any other Person that shall be required to execute and deliver a Facility Guarantee pursuant to Section 6.12 or is or will become a guarantor hereunder pursuant to Section 10.16 hereof.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments and obligations, including the similar obligations in respect of the Court Charges;

- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business) and, in each case, not past due for more than sixty (60) days after the due date (unless such amounts are being contested in good faith by appropriate proceedings and the applicable Person has set aside on its books adequate reserves with respect thereto in accordance with GAAP);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Initial Order" means an order issued and entered by the Court and any amendments or supplements thereto and additional orders in the CCAA Proceedings not prohibited

hereunder including as is in accordance with Section 7.17, in form and substance acceptable to the Monitor and the Agent, which shall stay all proceedings against the Borrower (other than the Agent) and which shall, inter alia, approve the Borrower entering into and performing its obligations under this Agreement and the other Loan Documents, provide for the appointment of a Chief Restructuring Officer acceptable to the Agent ("**CRO**") with powers of such CRO and the Monitor acceptable to the Agent, provide for security/protective measures required by the Agent, provide for the continuation of the cash management and cash collateral arrangements with any applicable Blocked Account Bank contemplated herein and under the J.S.N. Credit Agreement, approving the RISP, and providing for the Court Charges in amounts acceptable to the Agent. The term "*Initial Order*" shall, for greater certainty, include such additional Orders in the CCAA Proceedings as are acceptable to the Borrower and the Agent.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Interest Payment Date" means the first day after the end of each month and the Maturity Date.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Borrower's and/or its Subsidiaries' internal controls over financial reporting.

"Inventory" has the meaning given that term in the PPSA, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Reserves" means such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the saleability,

at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

- (a) obsolescence;
- (b) seasonality;
- (c) Shrink;
- (d) imbalance;
- (e) change in Inventory character;
- (f) change in Inventory composition;
- (g) change in Inventory mix;
- (h) markdowns (both permanent and point of sale);
- (i) retail mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events;
- (j) out-of-date and/or expired Inventory; and
- (k) reductions in precious metal commodity costs.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Investment Policy" means the complete and accurate list of all Investments held by the Borrower on the Closing Date showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof, as set forth on Schedule 7.02(a).

"ITA" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"Joinder" means an agreement, in form and substance reasonably satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by

the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

“**J.S.N.**” or “**JSN**” means J.S.N. Jewellery Inc. and its successors and assigns.

“**J.S.N. Borrowers**” or “**JSN Borrowers**” means the “*Borrowers*” under and as defined in the J.S.N. Credit Agreement and their respective successors and assigns.

“**J.S.N. Credit Agreement**” or “**JSN Credit Agreement**” means that certain Credit Agreement dated as of July 18, 2013 entered into among the J.S.N. Borrowers, certain of the Guarantors, the Agents and the Lenders (as each of those terms is defined therein), together with all instruments, documents and agreements executed or delivered in connection therewith, as amended, including by the Forbearance Agreement, restated, supplemented and extended.

“**Junior Debt**” means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent or which is secured by Liens which have been postponed to the Liens granted to secure the Obligations on terms approved by the Agent.

“**Laws**” means each international, foreign, Federal, provincial, territorial, state and local law, statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

“**Lease**” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“**Lender**” means, individually, a Revolving Lender, and collectively, all such Persons.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“**Lien**” means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien/right/claim/deemed trust (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidation" means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Law as a creditor of Borrower (subject to the Initial Order) with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Borrower pursuant to the Restructuring Plan and the Forbearance Agreement acting with the approval of the Monitor and the Agent, of any public, private or "*going out of business*", "*store closing*", or other similarly themed sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word **"Liquidation"** (such as "*Liquidate*") are used with like meaning in this Agreement.

"Loan" means any extension of credit by a Lender to the Borrower under Article 2 in the form of a Committed Revolving Loan or otherwise.

"Loan Account" has the meaning assigned to such term in Section 2.11(a).

"Loan Documents" means this Agreement, each Note, the Pricing Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, the Security Documents, each Facility Guarantee, the Shilon Guarantee, each Blocked Account Agreement, each Security Agreement, and any other instrument, acknowledgement, confirmation, indemnity, guarantee or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by the Agent or any of its Affiliates, each as amended and in effect from time to time.

"Loan Parties" means, collectively, the Borrower, each Guarantor including the Personal Guarantor and each of their respective heirs, executors, administrators, other legal representatives, successors and assigns.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party; (b) a material impairment of the ability of any of them to perform its obligations under any Loan Document, the J.S.N. Credit Agreement or the Forbearance Agreement to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or any Lender under the Loan Documents, the J.S.N. Credit Agreement or the Forbearance Agreement, or (d) the validity, perfection or priority (subject to the Court Charges and the ability of the agent to implement Reserves) of any of the Liens or DIP Charge in favor of the Agent for the benefit of the Credit Parties on any of the Collateral; or (e) any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any such Person of any Loan Document, the J.S.N. Credit Agreement or the Forbearance Agreement to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other than existing events would result in a Material Adverse Effect. However, a Material Adverse Effect shall not be deemed to exist merely as a result of the insolvency or near insolvency condition of the Borrower, the issuance of the Initial Order or the CCAA Proceedings.

"Material Contract" means with respect to any Person, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of C\$500,000 or more in any Fiscal Year or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

"Material Indebtedness" means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding C\$500,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

"Maturity Date" means July 29, 2016.

"Maximum Revolving Loan Amount" means, at any time of determination, the lesser of:

- (a) the Aggregate Revolving Commitments; and
- (b) the BM Borrowing Base, less the amount advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extensions of credit stated to be required under and set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the BM Budget for such amount.

"Measurement Period" means, at any date of determination, the most recently completed twelve (12) Fiscal Months.

"Monitor" means Alvarez & Marsal Canada Inc., the Court appointed monitor in the CCAA Proceedings or such other Person approved by the Court and acceptable to Agent.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Net Proceeds" means:

- (c) with respect to any Prepayment Event by Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the DIP Charge or the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents) and

(B) the reasonable and customary out-of-pocket expenses incurred by Borrower or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by Borrower to third parties (other than Affiliates)); and

- (d) with respect to the sale or issuance of any Equity Interest by Borrower or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by Borrower or such Subsidiary in connection therewith.

"Note" means a Revolving Note as may be amended, restated, supplemented or modified from time to time.

"Obligations" means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party, or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding, and (b) any Other Liabilities.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation, amalgamation or continuation, as applicable (or equivalent thereof) and the bylaws (or equivalent thereof); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

"Other Liabilities" means (a) any obligation on account of (i) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (ii) any transaction with the Agent or any of its Affiliates that arises out of any Bank Product entered into with any Loan Party and any such Person, as each may be amended from time to time.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means with respect to Committed Revolving Loans on any date, the aggregate outstanding principal amount thereof (and any and all due but unpaid interest thereon or any costs, fees or expenses then owing and payable) after giving effect to any borrowings and prepayments or repayments of Committed Revolving Loans occurring on such date.

"Overadvance" means a Borrowing to the extent that, immediately after its having been made, Availability hereunder is less than zero.

"Participant" has the meaning specified in Section 10.06(d).

"Participation Register" has the meaning provided therefor in Section 10.06(d).

"Patriot Act" shall have the meaning provided in Section 10.17.

"Payment Date" means the last Business Day of each fiscal month and the Termination Date.

"PCMLTFA" has the meaning given in Section 5.29.

"Pension Plan" means each pension plan required to be registered under applicable law that is maintained or contributed to by a Loan Party for its employees or former employees, but does not include the Canada Pension Plan as maintained by the Government of Canada.

"Perfection Certificate" means that certain perfection certificate executed and delivered by the Loan Parties in favour of the Agent, for the benefit of the Credit Parties in connection with the J.S.N. Credit Agreement, and each other Perfection Certificate (which shall be in form and substance reasonably acceptable to the Agent) executed and delivered by any Loan Party in favour of the Agent for the benefit of the Credit Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance herewith.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable credit discretion from the perspective of a secured asset based debtor in possession lender.

"Permitted Disposition" means any of the following:

- (a) Dispositions of Inventory in the ordinary course of business;

- (b) Dispositions of other property or assets for cash in an aggregate amount not less than the fair market value of such property or assets pursuant to the Restructuring Plan and the Initial Order;
- (c) **[Reserved]**
- (d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;
- (e) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of Borrower and the Monitor, no longer useful or necessary in its business or that of any Subsidiary all as contemplated in the Restructuring Plan and permitted by the Initial Order; and
- (f) sales, transfers and Dispositions among the Loan Parties or by any Subsidiary to a Loan Party.

"Permitted Encumbrances" means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue or are being contested in compliance with Section 6.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, employment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) Liens in respect of judgments that would not constitute an Event of Default hereunder;
- (f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary

conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

- (g) Liens existing on the Closing Date and listed on Schedule 7.01;
- (h) **[Reserved]**
- (i) Liens in favour of the Agent;
- (j) statutory Liens of landlords and lessors in respect of rent not in default;
- (k) possessory Liens in favour of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;
- (l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favour of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;
- (m) Liens arising from precautionary PPSA filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;
- (n) Liens in favour of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations that are (A) not yet due and payable or are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and Agent has implemented Reserves, and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation and such goods are released and being delivered to the applicable Loan Party; and
- (o) The Court Charges set out in the Initial Order.

"Permitted Indebtedness" means each of the following as long as no Default or Event of Default exists or would arise from the incurrence thereof:

- (a) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03;
- (b) Indebtedness of any Loan Party to any other Loan Party;

- (c) the Obligations (including the Pre-Petition Liabilities); and
- (d) Indebtedness for trade payables owing prior to the CCAA Proceedings and Post-Petition expenses incurred in accordance with the Budget and the Restructuring Plan;
- (e) **[Reserved]**
- (f) obligations in respect of the Court Charges set out in the Initial Order.

“Permitted Investments” means each of the following as long as same is approved by the Monitor and no Default or Event of Default exists or would arise from the making of such Investment:

- (a) readily marketable obligations issued or directly and fully guaranteed or insured by the federal government of Canada or the United States or any agency or instrumentality thereof having maturities of not more than 30 days from the date of acquisition thereof; provided that the full faith and credit of the federal government of Canada or the United States (as applicable) is pledged in support thereof;
- (b) **[Reserved]**
- (c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of Canada, the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of Canada, the United States, any state thereof or the District of Columbia, and is a Schedule I bank under the *Bank Act* (Canada) or a member of the Federal Reserve System of the United States, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least C\$1,000,000,000, in each case with maturities of not more than 30 days from the date of acquisition thereof;
- (d) **[Reserved]**
- (e) Investments, classified in accordance with GAAP as current assets of the Borrower on a short term basis with no brokerage costs or fees, in any money market fund or mutual fund that has the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;
- (f) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

- (g) [Reserved]
- (h) [Reserved]
- (i) Guarantees constituting Permitted Indebtedness;
- (j) [Reserved]
- (k) [Reserved]

provided, however, that notwithstanding the foregoing, no such Investments specified above shall be permitted unless such Investments shall be pledged and hypothecated to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

"Permitted Overadvance" means an Overadvance made by the Agent, in its Permitted Discretion, which is made:

- (a) to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties;
- (b) to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation; or
- (c) to pay any other amount chargeable to any Loan Party hereunder;

provided however, that the foregoing shall not result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; provided further that the Agent may only make an Overadvance in its sole, absolute and unfettered discretion.

"Permitted Sales" means a transaction or transactions for the sale of certain of the Borrower's Inventory through the permanent closing of certain of the Borrower's stores and the sale of excess Inventory through such locations in accordance with the Restructuring Plan and Budget as approved by the Court pursuant to the applicable provisions of the Initial Order, any subsequent Court order under the CCAA, with the assistance of and as recommended by one or more independent, nationally recognized, professional retail consultants, acceptable to the Monitor and the Agent, which transaction or transactions shall be on terms satisfactory to the Monitor and the Agent and be in accordance with the Restructuring Plan, the Forbearance Agreement and the Initial Order.

"Person" means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

"Personal Guarantor" means Mr. Joseph Shilon of 33 Thornbank Road, Thornhill, Ontario, L4J 2A1, Canada.

"Plan" means any *"employee benefit plan"* (as such term is defined in Section 3(3) of ERISA) established by the Borrower.

"Plan of Compromise" means a plan of compromise or arrangement filed in the CCAA Proceedings.

"Post-Petition" refers to the period after the Closing Date.

"PPSA" means the *Personal Property Security Act* (Ontario) and the regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of Agent's security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario, PPSA shall mean those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"Prepayment Event" means:

- (a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of a Loan Party, other than Permitted Dispositions provided the provisions hereof including Section 6.13 are complied with and other than any Disposition of Inventory in the ordinary course of business;
- (b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), any property or asset of a Loan Party, unless the proceeds therefrom are required to be paid to the holder of a Permitted Encumbrance on such property or asset having priority over the DIP Charge or the Lien of the Agent;
- (c) the issuance by a Loan Party of any Equity Interests;
- (d) the incurrence by a Loan Party of any Indebtedness for borrowed money other than Permitted Indebtedness; or
- (e) the receipt by any Loan Party of any Extraordinary Receipts.

"Pre-Petition Liabilities" means all *"Obligations"* as defined in and owing under the J.S.N. Credit Agreement immediately before the granting of the Initial Order, including any *"Permitted Overadvance"* (under and as defined in the J.S.N. Credit Agreement).

"Pre-Petition Loan Documents" means the *"Loan Documents"* as defined in the J.S.N. Credit Agreement.

"Pre-Petition Revolving Loans" means the "*Committed Revolving Loans*" as defined in the J.S.N. Credit Agreement.

"Pricing Letter" means the letter agreement dated as of July 18, 2013, among the J.S.N. Borrowers and the Agent.

"Priority Payables" means (a) the full amount of the liabilities of any applicable Person which (i) have a trust imposed to provide for payment including any trust, Lien or claim in favour of any subcontractors, or a security interest, pledge, Lien, hypothec or charge ranking or capable of ranking senior to or pari passu with security interests, Liens, hypothecs or charges securing the Obligations on any Collateral under any federal, provincial, state, county, district, municipal, local or foreign law, or (ii) have a right imposed to provide for payment secured by a Lien ranking or capable of ranking senior to or pari passu with the Obligations under local or national law, regulation or directive, including, but not limited to, claims for unremitted and/or accelerated rents, taxes, wages (including, without limitation, obligations under the *Wage Earner Protection Program Act* (Canada) which are due and payable), withholdings taxes, value added taxes and other amounts payable to an insolvency administrator, employee withholdings or deductions and vacation pay (including, without limitation, obligations under the *Wage Earner Protection Program Act* (Canada) which are due and payable), severance and termination pay, workers' compensation obligations, government royalties or pension obligations in each case to the extent such trust, or security interest, Lien, hypothec or charge has been or may be imposed, and (b) the amount equal to the aggregate value of the Inventory which the Agent, in good faith, and on a reasonable basis, considers is subject to retention of title by a supplier or a right of a supplier to recover possession thereof, where such supplier's right has priority over the security interests, Liens, hypothecs or charges securing the Obligations, including, without limitation, Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the *Bankruptcy and Insolvency Act* (Canada) or any applicable Law granting revendication or similar rights to unpaid suppliers or any similar laws of Canada or any other applicable jurisdiction; which rank senior, and are payable in priority, to the Agent and Lenders in the CCAA Proceedings.

"Real Estate" means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

"Receipts and Collections" has the meaning specified in Section 6.13(c).

"Register" has the meaning specified in Section 10.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers and advisors and representatives of such Person and of such Person's Affiliates.

"Rent Reserve" means an amount as the Agent may from time to time determine in its discretion as being appropriate as reserves for the payment of rent at any leased business location of Borrower for which a Collateral Access Agreement has not been obtained.

"Reports" has the meaning provided in Section 9.12(b).

"Request for Borrowing" means, with respect to a Borrowing of Committed Revolving Loans, a Committed Loan Notice.

"Required Lenders" means, as of any date of determination, Lenders holding more than fifty percent (50%) of the sum of the Aggregate Revolving Commitments and the then aggregate outstanding principal balance of the Term Loans or, if the Aggregate Revolving Commitments have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than fifty percent (50%) of the Total Outstandings; provided that the Revolving Commitment of, and the portion in the aggregate of the Total Outstandings held or deemed held by, any Defaulting Lender or Deteriorating Lender shall be excluded for purposes of making a determination of Required Lenders.

"Required Revolving Lenders" means, as of any date of determination, Lenders holding more than fifty percent (50%) of the Aggregate Revolving Commitments or, if the commitment of each Revolving Lender to make Committed Revolving Loans have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than fifty percent (50%) of the Total Revolver Outstandings; provided, that the Revolving Commitment of, and the portion of the Total Revolver Outstandings held or deemed held by, any Defaulting Lender or Deteriorating Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

"Reserves" means all Inventory Reserves and Availability Reserves.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of Borrower or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of Borrower as an authorized signatory of any certificate or other document to be delivered hereunder and for whom the Agent has received satisfactory background checks. Any document delivered hereunder that is signed by a Responsible Officer of Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of Borrower.

"Restricted Payment" shall mean, with respect to any Person, any payment by such Person (i) of any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of such Person or any of its Subsidiaries, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance, cancellation, termination or other acquisition of any of any such capital stock or Equity Interest of such Person or any warrants, options or rights to acquire any such capital stock or Equity Interests of such Person, or the making by such Person of any other distribution

in respect of any such stock or Equity Interests, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person ranking in right of payment subordinate to any liability of such Person under the Loan Documents, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a shareholder of such Person of a shareholder of such Person, (v) in respect of an Investment, or (vi) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof, other than those made in the ordinary course of business and in accordance with the Budget.

"Restructuring Plan" means, with respect to the CCAA Court Proceedings, (i) a detailed restructuring plan prepared by management of the Borrower and approved by the Monitor, which shall include (without limitation) an *"Availability"* model for the Borrower hereunder and for the J.S.N. Borrowers under the J.S.N. Credit Agreement, the Budget, contemplated store closures and consolidations and liquidations thereof and of excess Inventory, reductions in overhead and operational costs, the RISP and such other information (financial or otherwise) as is reasonably requested by the Agent, and (ii) any revisions to such forecast, in each case in form and substance satisfactory to the Agent in its Permitted Discretion.

"Revolving Commitment" means, as to each Revolving Lender, its obligation to make Committed Revolving Loans to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which the Revolving Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous Committed Revolving Loans made by each of the Revolving Lenders pursuant to Section 2.01.

"Revolving Lender" means each Lender having a Revolving Commitment as set forth on **Schedule 2.01** hereto or in the Assignment and Assumption by which such Person becomes a Revolving Lender.

"Revolving Note" means a promissory note made by the Borrower in favour of a Revolving Lender evidencing the Committed Revolving Loans made by such Revolving Lender, substantially in the form of **Exhibit C**.

"RISP" means the refinancing, sale and investment solicitation process contemplated in the Initial Order and the Forbearance Agreement and set out in **Schedule 6.20** attached hereto.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Salus" means Salus Capital Partners, LLC and its successors.

"Salus Entity" has the meaning provided in Section 10.06.

"Securities Laws" means any applicable provincial securities legislation (including regulations, guidelines and "*national policies*"), and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the applicable securities regulators or the Canadian Institute of Chartered Accountants.

"Security Agreement" collectively means any and all security agreements executed and delivered by the Loan Parties and any of their applicable Affiliates to and in favour of the Agent, both before and on the Closing Date, as amended, modified, supplemented, renewed, restated or replaced.

"Security Documents" means each Security Agreement, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, and each other security agreement or other instrument or document executed and delivered to the Agent by any Loan Party granting a Lien to secure any of the Obligations.

"Settlement Date" has the meaning provided in Section 2.14(a).

"Shilon Guarantee" or **"Personal Guarantee"** means a guarantee by the Personal Guarantor of the Obligations, with recourse under such guarantee limited to C\$11,000,000.

"Shrink" means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"Spot Rate" has the meaning given to such term in Section 1.06 hereof.

"Store" means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "*Subsidiary*" or to "*Subsidiaries*" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options,

forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "*Master Agreement*"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Obligations or the "*Obligations*" under and as defined in the J.S.N. Credit Agreement are accelerated (or deemed accelerated) and the "*Revolving Commitments*" hereunder or thereunder are irrevocably terminated (or deemed terminated) in accordance with Article 8 or the applicable provisions of the J.S.N. Credit Agreement, or (iii) the termination of the Revolving Commitments in accordance with the provisions of Section 2.06 hereof, (iv) the date on which a refinancing of all the Obligations hereunder and all "*Obligations*" under and as defined in the J.S.N. Credit Agreement is consummated; and (v) the approval in a final order of the Court of, and the effectiveness of, a Plan of Compromise under the CCAA which final order has vested and is not appealable.

"Total Outstandings" means the outstanding principal balance of the Total Revolver Outstandings.

"Total Revolver Outstandings" means the aggregate Outstanding Amount of all Committed Revolving Loans.

"Unintentional Overadvance" means an Overadvance which, to the Agent's knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Borrowing Base or misrepresentation by the Loan Parties.

"United States" and **"U.S."** mean the United States of America.

"U.S. Rate Loan" means a US\$ Loan that bears interest in accordance with Section 2.09 hereof.

"U.S. Dollars", **"\$"**, and **"US\$"** mean lawful money of the United States.

"Variance Report" means a report, in form and substance acceptable to Agent, prepared by the Borrower's management and approved by the Monitor reflecting on a line-item basis of each of the Borrower's (on an individual basis) and the Combined J.S.N. Borrowers' actual performance compared to the Budget in respect of the Obligations hereunder and the *"Obligations"* under and as defined in the J.S.N. Credit Agreement for the applicable date and time period and on a cumulative basis for the period after the Closing Date and the percentage variance of actual results in respect of the matters set out in Section 6.20 from those reflected in the Budget, along with management's and Monitor's explanation of such variance.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words **"include," "includes"** and **"including"** shall be deemed to be followed by the phrase *"without limitation."* The use of quotation marks shall be a reference to the defined term in the J.S.N. Credit Agreement, and as the context requires, this Agreement. The word **"will"** shall be construed to have the same meaning and effect as the word *"shall."* Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words **"herein," "hereof,"** and **"hereunder"**, and words of similar import when used in any Loan Document,

shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "**asset**" and "**property**" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

- (b) In the computation of periods of time from a specified date to a later specified date, the word "**from**" means "*from and including*"; the words "**to**" and "**until**" each mean "*to but excluding*"; and the word "**through**" means "*to and including*".
- (c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in the relevant currency in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Bank Products and any other contingent Obligations, providing Cash Collateralization or other collateral as may be requested by the Agent) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) other than (i) unasserted contingent indemnification Obligations, and (ii) any Obligations relating to Bank Products (other than Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or cash collateralized or otherwise collateralized as may be requested by the Agent.

1.03 Accounting Terms Generally.

- (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein.
- (b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such

ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

- 1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement, if any, shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).
- 1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).
- 1.06 Currency Equivalents Generally.** Any amount specified in this Agreement (other than in Article 2, Article 9 and Article 10) or any of the other Loan Documents to be in Canadian Dollars or U.S. Dollars (as applicable) shall also include the equivalent of such amount in any currency other than that in which it is expressed, such equivalent amount thereof in the applicable currency to be determined by the Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with U.S. Dollars (as applicable). For purposes of this Section 1.06, the "**Spot Rate**" for a currency means, at any time, the rate determined by the Agent to be the rate quoted to the Agent as the spot rate for the purchase by the Agent of such currency with another currency through its principal foreign exchange trading office at such time.
- 1.07 Currency Matters.** Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to the Credit Parties shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in U.S. Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts denominated in other currencies shall be converted in the Equivalent Amount of U.S. Dollars on the date of calculation, comparison, measurement or determination. However for the purposes of valuing the Borrowing Base and Availability, the value of any Collateral and/or the amount of the outstanding Obligations hereunder shall be converted into the Equivalent Amount thereof in Canadian Dollars; provided the Agent reserves the right to adjust any such conversion rate to take into account currency rate exchange fluctuations since the last valuation thereof.
- 1.08 Judgment Currency.**
- (a) If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other

currency (such other currency being hereinafter in this Section 1.08 referred to as the "**Judgment Currency**") an amount due under any Loan Document in any currency (the "**Obligation Currency**") other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 1.08 being hereinafter in this Section 1.08 referred to as the "**Judgment Conversion Date**").

- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 1.08(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Loan Party under this Section 1.08(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.
- (c) The term "*rate of exchange*" in this Section 1.08 means the rate of exchange at which Agent, on the relevant date at or about 12:00 noon on the relevant date, would be prepared to sell, in accordance with Agent's normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.
- (d) Unless otherwise specified, all references to dollar amounts in this Agreement shall mean U.S. Dollars.

ARTICLE 2 THE COMMITMENTS AND BORROWINGS

2.01 Committed Revolving Loans; Reserves.

Subject to the terms and conditions set forth herein, including the condition that there is no "*Availability*" under and pursuant to the J.S.N. Credit Agreement, each Revolving Lender severally agrees to make loans (each such loan, which, for certainty, does not include any loans made before the Closing Date under the J.S.N. Credit Agreement, a "**Committed Revolving Loan**") to the Borrower from time to time, on any Business Day during the Availability Period on which the Agent's offices are open to conduct business, provided that the "*Permitted Overadvance*" under and as defined in the J.S.N. Credit Agreement is being permanently reduced

in accordance with the Budget, in an aggregate amount not to exceed at any time outstanding the lesser of:

- (a) the amount of such Lender's Revolving Commitment, or
- (b) such Lender's Applicable Percentage of Availability hereunder, such that in each case after giving effect to any Revolving Credit Borrowing, the Total Revolver Outstandings shall not exceed the lesser of:
 - (i) the Maximum Revolving Loan Amount, and
 - (ii) the BM Borrowing Base, less any amounts advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extensions of credit stated to be required under and as set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the BM Budget for such amount.

Within the limits of each Lender's Revolving Commitment, and subject to Availability, the Budget and the Initial Order and the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and re-borrow Committed Revolving Loans under this Section 2.01 above except following permanent repayments following a Prepayment Event or in connection with Permitted Sales or as provided for in Section 2.05 or 2.06, but including payments pursuant to Section 6.13.

2.02 Borrowings of Committed Revolving Loans.

- (a) Committed Revolving Loans shall be U.S. Rate Loans denominated in U.S. Dollars as the Borrower may request subject to and in accordance with this Section 2.02. Subject to the other provisions of this Section 2.02.
- (b) Each Revolving Credit Borrowing shall be made upon the Borrower's irrevocable written notice to the Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received in writing by the Agent not later than 12:00 p.m. or such earlier time as the Agent may designate from time to time by written notice to the Borrower at least one (1) Business Day prior to the requested date of any Borrowing. Each Committed Loan Notice shall specify the requested date of the Borrowing, (which shall be a Business Day), and (ii) the principal amount of Committed Revolving Loans to be borrowed together with a breakdown of the stated amount and purposes of each "*Borrowing*" hereunder and under the J.S.N. Credit Agreement and a breakdown of the remaining "*Permitted Overadvance*" amount owing under the J.S.N. Credit Agreement.
- (c) Following receipt of a Request for Borrowing, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Revolving Loans. Each Lender shall make the amount of its Committed Revolving Loan available to the Agent in immediately available funds in the specified currency at the Agent's Office not later than 1:00 p.m. on the

Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrower in like funds by no later than 4:00 p.m. on the day of receipt by the Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Borrower.

- (d) The Agent, without the request of the Borrower, may advance as a Revolving Loan any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrower's obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Accounts as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to U.S. Rate Loans, as applicable.
- (e) Each Borrowing shall be made by the Lenders *pro rata* in accordance with their respective Applicable Percentage. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.
- (f) **[Reserved]**
- (g) The Agent and the Revolving Lenders shall have no obligation to make any Loan if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrower or the Lenders and the Borrower and each Lender shall be bound thereby. A Permitted Overadvance is for the account of the Borrower and shall constitute a U.S. Rate Loan and an Obligation and shall be repaid by the Borrower in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Revolving Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

2.03 **[Reserved]**

2.04 **[Reserved]**

2.05 Repayments and Prepayments.

- (a) Subject to the Initial Order and Section 6.13 hereof, the Borrower may, upon irrevocable notice from the Borrower to the Agent, at any time or from time to time voluntarily permanently prepay Revolving Loans in whole or in part; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. on the date of prepayment of U.S. Rate Loans; (ii) any prepayment of U.S. Rate Loans shall be in a principal amount of US\$500,000 or a whole multiple of US\$100,000 in excess thereof; or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.
- (b) If for any reason the Total Revolver Outstandings at any time exceed the lesser of:
 - (i) the Maximum Revolving Loan Amount; and
 - (ii) the BM Borrowing Base, less any amounts advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extension of credit stated to be required by the Borrower hereunder as set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the Budget for such amount; the Borrower shall immediately repay the Committed Revolving Loans in an aggregate amount equal to such excess.
- (c) The Borrower shall permanently reduce the "*Permitted Overadvance*" owing under and as defined in the J.S.N. Credit Agreement as reflected and in accordance with the Budget, and if there are any excess proceeds, firstly repay the Committed Revolving Loans and secondly, repay the Pre-Petition Liabilities in accordance with the provisions of the J.S.N. Credit Agreement, with proceeds and collections received by it pursuant to the cash management arrangements set out in Section 6.13 hereof.
- (d) The Borrower shall permanently reduce the "*Permitted Overadvance*" owing under and as defined in the J.S.N. Credit Agreement as reflected and in accordance with the Budget and then the Committed Revolving Loans in an amount equal to 100% of the Net Cash Proceeds received by it on account of a Prepayment Event and thereafter shall repay all other Pre-Petition Liabilities in accordance with the provisions of the J.S.N. Credit Agreement with any surplus proceeds pursuant to the cash management arrangements set out in Section 6.13 hereof.

- (c) Any repayment made pursuant to this Section above shall be applied in accordance with Section 8.03 hereof.

2.06 Termination or Reduction of Commitments.

- (a) Subject to the payment of any and all amounts due and payable to the Agent and Lenders at such time, the Borrower may, upon irrevocable notice from the Borrower to the Agent, terminate the Aggregate Revolving Commitments or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of U.S.\$1,000,000 or any whole multiple of U.S.\$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolver Outstandings would exceed the Aggregate Revolving Commitments.
- (b) The Agent will promptly notify the Lenders of any termination or reduction of the Aggregate Revolving Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Revolving Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, commitment fees) and interest in respect of the Aggregate Revolving Commitments accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

- (a) The Borrower shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of Committed Revolving Loans outstanding on such date, along with accrued but unpaid interest and all other Obligations outstanding with respect to the Committed Revolving Loans.
- (b) Without limiting Section 1.07, if Agent receives any payment from or on behalf of a Loan Party in any currency other than the currency in which the Obligation is denominated, Agent may convert the payment (including the proceeds of realization upon any Collateral) into the currency in which such Obligation is denominated at the "*Spot Rate*" (as such term is defined in Section 1.07).

2.08 Interest.

- (a) Subject to the provisions of this Section 2.08 below, each Committed Revolving Loan shall bear interest on the outstanding principal amount thereof at a rate equal to 20% per annum;
- (b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall, subject to the

Interest Act (Canada) and the provisions of this Section, thereafter be capitalized and bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

- (ii) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Borrower that all outstanding Obligations shall, subject to the *Interest Act* (Canada) and the provisions of this Section, thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Laws.
 - (iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be compounded and due and payable upon demand.
- (c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.
- (d) If any provision of this Agreement or of any of the other Loan Documents would obligate the Borrower or any other Loan Party to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by such Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to such Lender, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Any amount or rate of interest referred to in this Section shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

- (e) For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of a 360 day year or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.

2.09 Fees. The Borrower shall pay to the Agent for its own account a DIP arrangement fee in an amount equal to 1% of the Aggregate Revolving Commitments upon the execution and delivery of this Agreement. The Borrower shall also pay to the Agent for its own account a Collateral Monitoring Fee and a Commitment Fee/unused line fee at the times and in the amounts set out in the Pricing letter which shall be applicable to the accommodations of credit established hereunder.

2.10 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year, in each case and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made. For purposes of the calculation of interest on the Loans and the Outstanding Amount, all payments made by or on account of the Borrower shall be deemed to have been applied to the Loans one (1) Business Day after receipt of such payments by the Agent (as such receipt is determined pursuant to Section 2.12). Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

- (a) The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "**Loan Account**") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Committed Revolving Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of

such Lender's Note and upon cancellation of such Note, the Borrower will issue, in lieu thereof, a replacement Note in favour of such Lender, in the same principal amount thereof and otherwise of like tenor.

- (b) Agent shall render monthly statements regarding the Loan Account to the Borrower including principal, interest, fees, and including an itemization of all charges and expenses constituting Credit Party Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and the Credit Parties unless, within thirty (30) days after receipt thereof by the Borrower, the Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

2.12 Payments Generally; Agent's Clawback.

- (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defence, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in U.S. Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent shall be deemed received on the next succeeding Business Day (if received before 2:00 p.m.) or the second succeeding Business Day (if received after 2:00 p.m.) and any applicable interest or fee shall continue to accrue and shall be calculated pursuant to Section 2.10. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
- (b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Revolving Lender prior to 12:00 noon on the date of such Borrowing that Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry

rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Committed Revolving Loans. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly credit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Agent, then the amount so paid shall constitute such Lender's portion of such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Agent.

- (i) Payments by Borrower; Presumptions by Agent. Unless the Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

- (c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Borrowing set forth in Article 4 are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.
- (d) Obligations of Lenders Several. The obligations of the Revolving Lenders hereunder to make Committed Revolving Loans are several and not joint. The failure of any Revolving Lender to make any Committed Revolving Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Revolving Lender (as applicable) of its corresponding obligation to do so on such date, and or Revolving Lender (as applicable) shall be responsible for the failure of any other Revolving Lender to

so make its portion of its Committed Revolving Loan to purchase its participation or to make its payment hereunder.

- (e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in (a) any Revolving Lender's receiving payment of a proportion of the aggregate amount of Obligations in respect of Committed Revolving Loans greater than its pro rata share thereof as provided herein, or (b) (including, as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Revolving Lenders or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

- (i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and
- (ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its portion of its Committed Revolving Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders.

- (a) The amount of each Revolving Lender's Applicable Percentage of outstanding Committed Revolving Loans shall be computed weekly (or more frequently in the Agent's Permitted Discretion) and shall be adjusted upward or downward based on all Committed Revolving Loans and repayments of Committed Revolving

Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "**Settlement Date**") following the end of the period specified by the Agent.

- (b) The Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Revolving Lender its Applicable Percentage of repayments, and (ii) each Revolving Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Revolving Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Committed Revolving Loans made by each Revolving Lender shall be equal to such Revolving Lender's Applicable Percentage of all Committed Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Revolving Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Agent, such Revolving Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 [Reserved]

2.16 Defaulting Lenders.

- (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:
- (i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "*Required Lenders*" and Section 10.01.
- (ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be

determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, if so determined by the Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Committed Revolving Loans under this Agreement; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Committed Revolving Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Committed Revolving Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Committed Revolving Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Committed Revolving Loans of such Defaulting Lender until such time as all Committed Revolving Loans are held by the Lenders pro rata in accordance with the Revolving Commitments hereunder without giving effect to this Section 2.16(a). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

- (iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee payable hereunder for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).
- (b) Defaulting Lender Cure. If the Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Revolving Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Revolving Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a) above, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from

Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lenders having been a Defaulting Lender.

**ARTICLE 3
TAXES, YIELD PROTECTION AND ILLEGALITY;
APPOINTMENT OF LEAD BORROWER**

3.01 Taxes.

- (a) Payments Free of Taxes. Any and all payments by or on account of any Obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrower shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent or the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.
- (b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of the Agent or a Lender, shall be conclusive absent manifest error.
- (d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.
- (e) Treatment of Certain Refunds. If the Agent or any Lender determines, in its Permitted Discretion, that it has received a refund of any Taxes or Other Taxes as

to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender in the event the Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02 [Reserved]

3.03 [Reserved]

3.04 Increased Costs; Reserves on Loans.

(a) Increased Costs Generally. If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
- (ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or
- (iii) impose on any Lender any other condition, cost or expense affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

- (b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's

holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

- (c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in this Section above and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.
- (d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow or continue any Loan on the date or in the amount notified by the Borrower including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.06 Mitigation Obligations; Replacement of Lenders.

- (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, then such Lender shall use reasonable efforts to

designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

- (b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.12.

3.07 Survival. All of the Borrower's obligations under this Article 3 shall survive termination of the Aggregate Revolving Commitments and repayment of the Committed Revolving Loans and all other Obligations hereunder.

3.08 Reserved.

ARTICLE 4 CONDITIONS PRECEDENT TO BORROWINGS

4.01 Conditions of Initial Borrowing. The obligation of each Lender to make its initial Borrowing hereunder is subject to satisfaction of the following conditions precedent:

- (a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or the Lenders, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:
- (i) executed counterparts of this Agreement sufficient in number for distribution to the Agent, each Lender and the Borrower;
 - (ii) a Note executed by the Borrower in favour of each Lender requesting a Note;
 - (iii) **[Reserved]**
 - (iv) **[Reserved]**
 - (v) **[Reserved]**

- (vi) a certificate signed by Joseph Shilon, as requested by the Agent, certifying (A) that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied, and (B) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that upon entry of the Initial Order, all such consents, licenses and approvals have been obtained and are in full force and effect;
- (vii) promptly upon the Agent's reasonable request therefor, evidence that all insurance and cash management arrangements required to be maintained pursuant to the Loan Documents and the J.S.N. Credit Agreement, and all insurance endorsements in favour of the Agent required under the Loan Documents, have been obtained and are in effect;
- (viii) the Security Documents, including the amended and restated guarantee from the Personal Guarantor duly executed;
- (ix) all other Loan Documents, each duly executed by the applicable Loan Parties;
- (x) the Forbearance Agreement, in form and substance acceptable to Agent;
- (xi) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, and releases or subordination agreements satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;
- (xii) (A) all documents and instruments, including PPSA and UCC (to the extent applicable) financing statements, required by Law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent, (B) the DDA Notifications, Credit Card Notifications, and Blocked Account Agreements required pursuant to Section 6.13 hereof, (C) control agreements with respect to the Loan Parties' securities and investment accounts, and (D) Collateral Access Agreements as required by the Agent; or
- (xiii) such other assurances, certificates, documents, consents or opinions as the Agent reasonably may require;

- (b) the Borrower shall have retained the services of Gordon Brothers Group (or such other consultant as Agent may accept in its Permitted Discretion) on terms and conditions and for a term acceptable to Agent;
- (c) **[Reserved]**
- (d) The Agent shall have received a Borrowing Base Certificate dated the Closing Date and executed by a Responsible Officer of the Borrower.
- (e) **[Reserved]**
- (f) The Agent shall have received and be satisfied with the Budget, the RISP, the Restructuring Plan, the Monitor's report in connection with the Initial Order and such other information (financial or otherwise) reasonably requested by the Agent;
- (g) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or form the basis for an appeal of the Initial Order;
- (h) Other than any Material Contract or Material Indebtedness the remedies under which are stayed by the Initial Order, there shall not have occurred any default of any Material Contract of any Loan Party;
- (i) The consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organization Document;
- (j) All fees and expenses required to be paid to the Agent on or before the Closing Date shall have been paid in full, and all fees and expenses required to be paid to the Lenders on or before the Closing Date shall have been paid in full;
- (k) The Borrower shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Agent);
- (l) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "*know your customer*" and anti-money laundering rules and regulations, including without limitation the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *Patriot Act* with respect to the Loan Parties other than P.M.R. Inc.;
- (m) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Closing Date;

- (n) After giving effect to these transactions and the Initial Order, no Default or Event of Default shall exist on the Closing Date;
- (o) All of the Committed Revolving Loans hereunder shall be secured by Liens on all of the assets of the Loan Parties and all Post-Petition Revolving Loans shall at all times have super priority claim status subject only to Permitted Encumbrances;
- (p) All application materials and documents, including any service list in connection with all CCAA Proceedings, shall be in form and substance satisfactory to the Agent, acting reasonably;
- (q) The Initial Order shall (i) be in form and substance satisfactory to the Agent including regarding the amounts of the Court Charges and approving inter alia, this debtor-in-possession financing, the continuation of the cash management arrangements and cash collateral arrangements with the applicable Blocked Account Bank, the RISP, the Court Charges approved by the Agent, and the appointment of a CRO acceptable to Agent with powers and powers of the Monitor acceptable to the Agent, and (ii) shall have been entered and in full force and effect and shall not have been reversed, vacated, or stayed, subject to appeal or modified or superseded or negatively impacted in any way in the Agent's Permitted Discretion without the Agent's prior written consent and all necessary consents and approvals to the transaction contemplated herein and therein shall have been obtained to the satisfaction of the Agent;
- (r) The ownership, corporate structure and senior management of the Loan Parties shall be acceptable to the Agent;
- (s) The Borrower shall have received written confirmation of a repayment plan from Goldsmith and its Affiliates on terms and conditions acceptable to Agent which the Agent acknowledges it has received.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Borrowings. The obligation of each Lender to honour any Request for Borrowing is subject to the following conditions precedent:

- (a) the representations and warranties of each other Loan Party contained in Article 5 or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all respects on and as of the date of such Borrowing, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and

(ii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01;

- (b) no Default or Event of Default shall exist, including as a result of any non-compliance with Section 2.05, 6.13, 6.20 or 10.25(c) hereof or the Forbearance Agreement, or would result from such proposed Borrowing or from the application of the proceeds thereof;
- (c) the Agent shall have received a Request for Borrowing in accordance with the requirements hereof;
- (d) no event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred, including as a result of the condition precedent set out in Section 4.01(q)(ii) above not being met upon each Request for Borrowing; and
- (e) no "Overadvance" or "Permitted Overadvance" under and as defined in the J.S.N. Credit Agreement not reflected in the Budget shall exist, no Overadvance hereunder shall result from such Borrowing, and there shall be no "Availability" under the J.S.N. Credit Agreement.

Each Request for Borrowing submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied on and as of the date of the applicable Borrowing. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Revolving Lenders otherwise direct the Agent to cease making Committed Revolving Loans, the Revolving Lenders will fund their Applicable Percentage of all Committed Revolving Loans, which are requested by the Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article 4, agreed to by the Agent; provided, however, the making of any such Loans shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article 4 on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans hereunder, each Loan Party (other than Forever Jewellery Inc.) represents and warrants to the Agent and the other Credit Parties that:

- 5.01 Existence, Qualification and Power.** Each Loan Party and each Subsidiary thereof (a) is a corporation, unlimited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation, (b) has all requisite power and authority and all requisite governmental

licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and upon the entry of the Initial Order, carry on its business and (ii) upon the entry of the Initial Order, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its jurisdiction of incorporation, organization or formation, its jurisdiction of incorporation, organization, or formation, the location of such Loan Party's chief executive office, organization type, organization number, if any, issued by its jurisdiction of incorporation, organization or formation, and its federal employer identification number (if applicable).

- 5.02 Authorization; No Contravention.** Subject to the Initial Order, execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party has been, upon the entry of the Initial Order, duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) other than the Initial Order or any other Order made by the Court in connection with the CCAA Proceedings, or (iii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than the Court Charges and the Liens in favour of the Agent under the Security Documents); or (d) violate any Law.
- 5.03 Governmental Authorization; Other Consents.** Subject to the entry of the Initial Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.
- 5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered and upon entry of the Initial Order, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, the Initial Order and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

- (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Financial Statement Parties as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Financial Statement Parties as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.
- (b) The unaudited Combined balance sheet of the Financial Statement Parties dated and the related Combined statements of income or operations provided to Agent (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Financial Statement Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05 sets forth all Material Indebtedness and other liabilities, direct or contingent, of the Loan Parties and their Subsidiaries as of the date of such financial statements, including liabilities for Taxes, material commitments and Material Indebtedness.
- (c) **[Reserved]**
- (d) To the best knowledge of the Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial information delivered or to be delivered to the Agent or the Lenders, (ii) of the Borrowing Base or, (iii) of the assets, liabilities, financial condition or results of operations of the Financial Statement Parties on a Combined basis.
- (e) **[Reserved]**
- (f) The Combined forecasted balance sheet and statements of income and supplemental cash flow statements of the Financial Statement Parties delivered pursuant to the provisions hereof, including the Restructuring Plan and Budget, were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.
- (g) The Loan Parties and their Subsidiaries have no Indebtedness other than Indebtedness permitted pursuant to Section 7.03.

- 5.06 Litigation.** Except under or in connection with the CCAA Proceedings, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.
- 5.07 No Default.** No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness (other than the J.S.N. Credit Agreement and any other Material Contract or Material Indebtedness the remedies under which are stayed by the Initial Order) will exist or be continuing after the Closing Date.
- 5.08 Ownership of Property; Liens.**
- (a) Subject to the entry of the Initial Order, each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Subject to the entry of the Initial Order each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.
 - (b) Schedule 5.08(b)(1) sets forth the complete address of all Real Estate that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the complete address of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Subject to the entry of the Initial Order, each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.
 - (c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Permitted Encumbrances.
 - (d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

- (e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.
- (f) Schedule 7.04 set forth a list of locations where each Loan Party's inventory and equipment (other than inventory or equipment in transit) and books and records concerning the Collateral are kept (which Schedule 7.04 shall be promptly updated by the Loan Parties upon notice to Agent as permanent Collateral locations change).

5.09 Environmental Compliance.

- (a) No Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (b) None of the properties currently or formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on any list of properties containing Hazardous Materials maintained by any Governmental Authority or, to the knowledge of the Loan Parties, is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof.
- (c) No Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

- 5.10 Insurance.** The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid. The insurance maintained by the Loan Parties and their Subsidiaries does not include store-level theft insurance, but theft insurance is maintained in respect of each manufacturing and distribution facility.
- 5.11 Taxes.** Except as set forth in Schedule 5.11 and subject to the Initial Order and in accordance with the Budget, the Loan Parties and their Subsidiaries paid all Priority Payables which are due and payable as of such date and (other than Forever Jewellery Inc., P.M.R. Inc. and Always & Forever Family Collection Incorporated) have filed all Federal, provincial, territorial, state and other material tax returns and reports required to be filed, and have paid all Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed or registered and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect.
- 5.12 Pension Plans.** Schedule 5.12 lists all Benefit Plans maintained or contributed to by each Loan Party. No Loan Party maintains any Pension Plan.
- 5.13 Subsidiaries; Equity Interests.** The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of **Schedule 5.13**, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of the Loan Parties and each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of **Schedule 5.13** free and clear of all Liens except for those created under the Security Documents and the Initial Order. Except as set forth in **Schedule 5.13**, there are no outstanding rights to purchase any Equity Interests in any Loan Party or Subsidiary. The Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part(b) of **Schedule 5.13**. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of **Schedule 5.13** free and clear of all Liens except for those created under the Security Documents and the Initial Order. The copies of the Organization Documents of each Loan Party and each

amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 [Reserved]

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each of the Loan Parties and each Subsidiary is in compliance (a) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees (other than the Initial Order) applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 5.28, 5.29, 10.17 and 10.18 hereof.

5.17 Intellectual Property; Licenses, Etc. The Loan Parties and their Subsidiaries own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labour Matters. There are no strikes, lockouts, slowdowns or other material Labour disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with all applicable federal, provincial, territorial, state, local or foreign Law dealing with such matters. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other

benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18, no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation or union certification proceedings pending or, to any Loan Party's knowledge, threatened to be filed with any applicable labour relations board, organization or similar Governmental Authority, and no labour organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition or certification. There are no complaints, unfair labour practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

5.19 Security Documents.

- (a) The Security Agreement creates in favour of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable Lien in respect of the Obligations. The DIP Charge shall be a super priority debtor in possession lien in the Collateral to secure the DIP Obligations. Each of the DIP Charge and the Security Agreement are subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings (including the entry of the Initial Order) are in appropriate form and have been or will be filed in all applicable public and Court offices. Upon such filings and/or the obtaining of "control" (as defined in the PPSA), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the PPSA) or by obtaining control, under the PPSA (in effect on the date this representation is made) in each case prior and superior in right to any other Person.
- (b) When the Security Agreement (or a short form thereof) is filed in the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings in appropriate form are filed in the Canadian Intellectual Property Office and the personal property security statutes in the applicable jurisdictions, including the entry of the Initial Order, the Agent shall have a fully perfected Lien

on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the Canadian Intellectual Property Office, the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

5.20 Transfers. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

5.21 Deposit Accounts; Credit Card Arrangements.

- (a) Annexed hereto as Schedule 5.21(a) is a list of all DDA's maintained by the Borrower as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.
- (b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Borrower is a party with respect to the processing and/or payment to the Borrower of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.22 Brokers. Except as disclosed in Schedule 5.22, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.

5.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract (other than any Material Contract or Material Indebtedness the remedies under which are stayed by the Initial Order) and have not

received any notice of the intention of any other party thereto to terminate any Material Contract.

- 5.25 **Casualty.** Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labour dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.
- 5.26 **[Reserved]**
- 5.27 **Personally Identifiable Information.** Borrower maintains a policy for the treatment, handling and storage of consumer information and personally identifiable information in accordance with applicable Laws and a true, accurate and complete copy of the current version thereof has been provided to the Agent.
- 5.28 **Anti-Bribery/Anti-Corruption.** Each of the Loan Parties is now and at all times has been in compliance with all applicable anti-bribery or anti-corruption laws, and will remain in compliance with such Laws. No Loan Party will authorize, offer or make payments directly or indirectly to any Person that would result in a violation of any applicable anti-bribery or anticorruption Laws. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act of 1977*, as amended or in violation of the *Corruption of Foreign Public Officials Act (Canada)*, as amended; or (ii) for any purpose that could constitute a violation of applicable anti-bribery or anti-corruption laws in Canada, the United States or any other applicable jurisdiction.
- 5.29 ***The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).*** The Loan Parties are in compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (the "PCMLTFA") and all applicable regulations thereunder. Without limiting the generality of the foregoing, the Borrower has written anti-money laundering/anti-terrorist financing compliance policies and procedures in place (an "AML Program") which reflect the legislative requirements of the PCMLTFA and the regulations thereunder and which: (i) are up to date and have been approved by a senior officer (as defined in the PCMLTFA) of the Borrower, (ii) assess and document the money laundering/terrorist financing risks of the Loan Parties taking into consideration: (a) its clients and business relationships; (b) its products and delivery channels; (c) the geographic location of its activities, and (d) any other relevant factors, and (iii) include provisions in respect of filing large cash transactions and suspicious transactions, keeping required records and ascertaining identity of customers. The AML Program also includes a written ongoing compliance training program for all employees, agents or other persons authorized to act on the Borrower's behalf. The Borrower institutes and documents a review of its AML Program to test its effectiveness every two years.

ARTICLE 6 AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail satisfactory to the Agent:

- (a) [Reserved]
- (b) [Reserved]
- (c) as soon as available, but in any event within 30 days after the end of each of the Fiscal Months of each Fiscal Year of the Financial Statement Parties (commencing with the Fiscal Month ended April 2016, a Combined balance sheet of the Financial Statement Parties as at the end of such Fiscal Month, and the related Combined statements of income or operations and supplemental cash flow information as requested by Lender for such Fiscal Month, and for the portion of the Financial Statement Parties' Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the Budget, (B) beginning with the Combined statements for the period ending April 2016, the corresponding Fiscal Month of the previous Fiscal Year, and (C) beginning with the Combined statements for the period ending April 2016, the corresponding portion of the previous Fiscal Year, all in reasonable detail, such statements to be certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations and supplemental cash flow information as requested by Lender of the Financial Statement Parties as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the financial statements of the Financial Statement Parties;
- (d) [Reserved]

6.02 Certificates; Other Information. Deliver to the Agent in form and detail satisfactory to the Agent:

- (a) [Reserved]
- (b) monthly, and weekly if requested by the Agent concurrently with the delivery of the reporting referred to in Section 6.01(c), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of any financial statements or reporting, the Borrower shall also provide a statement of reconciliation conforming such financial statements or reporting to GAAP;

- (c) on the Wednesday of each Fiscal Week (or, (i) if such day is not a Business Day, or (ii) if the Monday and the Tuesday of such Fiscal Week is not a Business Day, on Thursday of such Fiscal Week), a Borrowing Base Certificate showing the BM Borrowing Base and the Combined Borrowing Base of the J.S.N. Borrowers as of the close of business as of the last day of the immediately preceding week (provided that the Appraised Value percentage applied to the Eligible Inventory set forth in each such Borrowing Base Certificate shall be the percentage set forth in the most recent appraisal obtained by the Agent pursuant to Section 6.10 hereof for the applicable month in which such Borrowing Base Certificate is delivered), each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Borrower and accompanied by all applicable system generated documentation supporting the information contained within the Borrowing Base Certificate, including but not limited to inventory reporting inclusive of inventory mix by category and/or department and, where applicable, accounts receivable detail documentation, screen shots of the Loan Parties' bank accounts requested by the Agent as of the date of such Borrowing Base Certificates, and any additional documentation (including with respect to the assets of P.M.R. Inc. and Forever Jewellery Inc. and in particular Inventory of the J.S.N. Borrowers in the possession of Forever Jewellery Inc., the receivables owing by Forever Jewellery Inc. to the J.S.N. Borrowers and the receivables owing by P.M.R. Inc. to the Borrower) reasonably requested by the Agent;
- (d) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Accounting Firm, the Monitor or other Person including any retail consultant, in connection with the Restructuring Plan, refinancing efforts and status, store closures, purchases, "*critical supplier*" payments, the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;
- (e) promptly upon receipt, copies of any and all offers, reports and requests for information with respect to the RISP and any and all discussion papers or term sheets from any potential financiers, investors and/or purchasers;
- (f) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with any securities commission or stock exchange, and in any case not otherwise required to be delivered to the Agent pursuant hereto;
- (g) the financial and collateral reports described on Schedule 6.02 hereto and in the Forbearance Agreement, at the times set forth in such Schedule or agreement;
- (h) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof

pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

- (i) promptly upon the Agent's request therefor, to use commercially reasonable efforts to provide the cashflow statements of and any other relevant reports requested by the Agent relating to each of Utopia Jewellery Co., Utopia Diamond Inc., and Global Diamonds (G.D.) Ltd. on both an individual and a Combined basis;
- (j) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;
- (k) promptly, and in any event within 5 Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any securities commission or other Governmental Authority or any stock exchange concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and
- (l) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request;
- (m) as soon as available, but in any event within 7 Business Days prior to any Court proceedings, any updates to the Budget;
- (n) weekly with the provision of each Borrowing Base Certificate, a Variance Report, a progress report of the Borrower and the Monitor regarding the Restructuring Plan, the RISP, any store closures and any related consolidations or Liquidations.

6.03 Notices. Promptly notify the Agent:

- (a) of the occurrence of any Default or Event of Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of any breach or non-performance of, or any default under, a Material Contract or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof, the remedies in respect of which are not stayed in the CCAA Proceedings;
- (d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority or the

commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws or the CCAA Proceedings;

- (e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (f) of any change in any Loan Party's senior executive officers;
- (g) of the discharge by any Loan Party of its present Accounting Firm or any withdrawal or resignation by such Accounting Firm or consultant contemplated herein;
- (h) of any collective bargaining agreement or other labour contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;
- (i) the non-payment of any Priority Payables when due (unless such non-payment is consistent with the Initial Order);
- (j) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of expropriation or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;
- (k) of any material (in accordance with the standard specified in Section 6.20 herein) variance from the actual performance from the projected results in the Restructuring Plan, Budget or the Forbearance Agreement or any material variance from the milestones in the RISF;
- (l) of any transaction of the nature contained in Article 7 hereof; and
- (m) of any failure by any Loan Party to pay rent at any distribution centre or warehouse or store locations in accordance with the Restructuring Plan or Budget.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03 shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

- 6.04 Payment of Obligations.** Subject to the Initial Order, the Restructuring Plan and the Budget, each Loan Party will, and will cause each of its Subsidiaries to, to pay all Priority Payables, and to pay its Indebtedness and other obligations, including Tax liabilities to the extent incurred after the Closing Date, before the same shall become delinquent or in default except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books

adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

- 6.05 Preservation of Existence, Etc.** Preserve, renew and maintain in full force and effect its legal existence and subject to the Initial Order, and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.05; (b) subject to the Initial Order and the Restructuring Plan, take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties.
- 6.06 Maintenance of Properties.** (a) Subject to the Initial Order and the Restructuring Plan, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.
- 6.07 Maintenance of Insurance.**
- (a) Maintain with financially sound and reputable insurance companies having an A.M. Best Rating of at least A-, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.
 - (b) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.
 - (c) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

- (d) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, any Lender or any other Credit Party shall be a co insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.
- (e) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.
- (f) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.
- (g) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "*Blanket Crime*" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.
- (h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.
- (i) None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except as otherwise permitted under the Initial Order and in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

- (a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.
- (b) At all times retain an Accounting Firm which is reasonably satisfactory to the Agent and shall instruct such Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Accounting Firm, as may be raised by the Agent.

6.10 Inspection Rights.

- (a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Accounting Firm, and permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct evaluations of the Restructuring Plan, the Budget, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired. Notwithstanding the foregoing, the Borrower covenants and agrees to engage Gordon Brothers Group (or such replacement consultant as Agent may accept in its Permitted Discretion) as a consultant to conduct such evaluations and that Borrower shall be responsible for the costs, fees and expenses (the "**Consultant Costs**") incurred in respect of such appointment.
- (b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) the Borrower's practices in

the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (ii) the Restructuring Plan and Budget. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such examinations and evaluations. Without limiting the foregoing, the Loan Parties acknowledge that the Agent may, in its Permitted Discretion, undertake as many commercial finance examinations as it deems necessary or appropriate, at Borrower's expense.

- (c) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets (and grading of diamond and other gem stone Inventory) included in the Borrowing Base. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such appraisals. Without limiting the foregoing, the Loan Parties acknowledge that the Agent may, in its Permitted Discretion, undertake as many inventory appraisals at the Loan Parties' expense as it deems necessary or appropriate.

6.11 Use of Proceeds. Use the proceeds of the Borrowings to finance the working capital requirements of the Borrower, including the purchase of inventory in the ordinary course of business and in accordance with the Budget and the Restructuring Plan but for greater certainty, shall not be drawn down to pay down principal of the Pre-Petition Liabilities.

6.12 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary and promptly thereafter (and in any event within fifteen (15) days), cause any such Person (a) (i) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guarantee or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in Section 4.01 and favourable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness, in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the inclusion of any acquired assets in the computation of the Borrowing Base.

6.13 Cash Management.

- (a) On or prior to the Closing Date the Borrower, and within 10 days following the Closing Date each of Always & Forever Family Collection Incorporated and P.M.R. Inc., shall:
 - (i) deliver to the Agent copies of notifications (each, a "**Credit Card Notification**") substantially in the form attached hereto as **Exhibit G** which have been executed on behalf of such Loan Party and the applicable Credit Card Issuer or Credit Card Processor and delivered to such Loan Party's Credit Card Issuers and Credit Card Processors listed on **Schedule 5.21(b)** and deliver to such Credit Card Issuers and Credit Card Processors a copy of the Initial Order promptly following the Closing Date as may be reasonably required to give effect thereto; and
 - (ii) enter into a Blocked Account Agreement satisfactory in form and substance to the Agent with each Blocked Account Bank (collectively, together with the Concentration Account, the "**Blocked Accounts**") and deliver to each Blocked Account Bank a copy of the Initial Order promptly following the Closing Date as may be reasonably required to give effect thereto; and
 - (iii) at the request of the Agent, deliver to the Agent copies of notifications (each, a "**DDA Notification**") substantially in the form attached hereto as **Exhibit H** which have been executed on behalf of such Loan Party and delivered to each depository institution listed on Schedule 5.21(a).
- (b) From and after the Closing Date, such Loan Parties (other than Always & Forever Collections Incorporated and P.M.R. Inc. which shall be within ten (10) days of the Closing Date) shall via ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account all of the following:
 - (i) all amounts on deposit in each DDA (net of any minimum balance, not to exceed C\$2,500 (or the equivalent thereof in any other currency), as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained);
 - (ii) all payments due from Credit Card Processors and Credit Card Issuers and proceeds of all credit card charges;
 - (iii) all cash receipts from the Disposition of Inventory and other assets (whether or not constituting Collateral);
 - (iv) all proceeds of Accounts; and
 - (v) all Net Proceeds, and all other cash payments received by such Loan Party from any Person or from any source or on account of any Disposition or

other transaction or event, including, without limitation, any Prepayment Event or Permitted Sale.

- (c) Each Blocked Account Agreement shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account controlled by the Agent at Bank of Montreal, Royal Bank of Canada, TD Bank, Bank of Nova Scotia and any other applicable Blocked Account Bank (the "**Concentration Account**"), of all cash receipts and collections received by the JSN Borrowers (and all other Loan Parties upon the issuance of a "*block notice*" under the applicable Blocked Account Agreement) from all sources (the "**Receipts and Collections**"), including, without limitation, the following:
- (i) the then entire ledger balance of each Blocked Account (net of any minimum balance, not to exceed C\$2,500 (or the equivalent thereof in any other currency), as may be required to be kept in the subject Blocked Account by the Blocked Account Bank);
 - (ii) all amounts required to be deposited into the Blocked Accounts pursuant to clause (b) above; and
 - (iii) any other cash amounts received from any other source, on account of any type of transaction or event;

provided, however, the Agent may, in its sole discretion, permit the Borrower to have one or more "*intermediate*" Blocked Account Agreements, whereby such agreements would provide, upon notice from the Agent, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) all Receipts and Collections to another Blocked Account, as opposed to the Concentration Account and the Agent will give credit to the existing customers of the Borrower for existing "*layaway deposits*" which may be held by them in the Concentration Account prior to any bankruptcy, receivership or liquidation of the Borrower.

The Concentration Account shall at all times be under the sole dominion and control of the Agent and all funds therein shall be wired to an account specified by Agent no less frequently than daily. The Agent shall cause all funds of the J.S.N. Borrowers on deposit in the Concentration Account to be applied firstly to the "Permitted Overadvance" under the J.S.N. Credit Agreement until it has been eliminated in full, then secondly, to the Obligations hereunder, and thirdly, to the Pre-Petition Liabilities of the Borrower in accordance with Sections 2.05 and 8.03 of this Agreement, the Forbearance Agreement, the Budget and the Initial Order. The Loan Parties hereby acknowledge and agree that (i) the JSN Borrowers have no right of withdrawal from the Concentration Account, and (ii) the funds on deposit in the Concentration Account or any other deposit account shall at all times be collateral security for all such DIP Obligations and obligations with respect to Pre-Petition Liabilities of the JSN Borrowers. In the event that, notwithstanding the provisions of this Section 6.13, the JSN Borrowers receive or otherwise has dominion and control of any such cash receipts or collections, such receipts and collections shall be

held and be deemed to be held separate apart and in trust by them exclusively for the Agent, shall not be, and shall be deemed not to be, commingled with their other funds or deposited in any account of theirs and shall, not later than the Business Day after receipt thereof, be deposited into the Blocked Account or dealt with in such other fashion as such JSN Borrower may be instructed by the Agent.

- (d) Upon the request of the Agent, such JSN Borrower shall cause bank statements and/or other reports to be delivered to the Agent not less often than weekly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above and provide the Agent with "view only" access to their bank accounts identified by the Agent.
- (e) If the Agent does not require DDA Notifications to be delivered on the Closing Date in accordance with Section 6.13 above, then the Borrower shall, upon the request of the Agent at any time after the Closing Date, deliver to the Agent copies of DDA Notifications, which have been executed on behalf of the applicable Loan Party and delivered to each applicable depository institution.
- (f) Each Loan Party hereby acknowledges, confirms and agrees that the Agent shall have the contractual right to continue to apply the contemplated cash management arrangements contemplated herein, under the Forbearance Agreement and under the J.S.N. Credit Agreement notwithstanding any Default, termination or non-renewal of this Agreement or the J.S.N. Credit Agreement or any of the credit facilities contemplated herein or therein or any stay of proceedings or filing under any Debtor Relief Law or any other applicable Law as a matter of, and shall be considered and deemed to be a matter of, replacing and monitoring the Lender's Collateral and not as an enforcement of any of their security or Liens.

6.14 Information Regarding the Collateral.

- (a) Furnish to the Agent at least thirty (30) days prior written notice of any change in:
 - (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any warehouse, office or distribution facility at which Collateral owned by it is located (including the establishment of any such new warehouse, office or distribution facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation, organization or formation; or (iv) any Loan Party's federal taxpayer identification number or organizational identification number assigned to it by its jurisdiction of incorporation, organization or formation. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the PPSA, UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

- (b) If any of the information on any of the Schedules hereto becomes inaccurate or misleading in any material respect as a result of changes after the Closing Date, the Borrower shall advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

6.15 Physical Inventories.

- (a) Cause physical inventories to be undertaken on 1 Business Day notice, at the expense of the Loan Parties, as may be required by the Agent in its Permitted Discretion, in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Borrower, within five days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.
- (b) Permit the Agent, in its Permitted Discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

6.16 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise

comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

- (a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.
- (b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien (subject to Permitted Encumbrances) under the Security Documents and Initial Order upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by the Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.
- (c) Use, and cause each of the Subsidiaries to use, their commercially reasonable efforts to obtain lease terms in any Lease entered into by the Borrower after the Closing Date not expressly prohibiting the recording in the relevant real estate filing office of an appropriate memorandum of lease and the encumbrancing of the leasehold interest of the Borrower in the property that is the subject of such Lease.
- (d) Upon the request of the Agent, cause each of its customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

- (e) Upon the request of the Agent, cause any of its landlords to deliver a Collateral Access Agreement to the Agent in such form as the Agent may reasonably require.
- 6.18 Compliance with Terms of Leaseholds.** Except as otherwise expressly permitted hereunder, the Restructuring Plan, the Budget and the Initial Order, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing.
- 6.19 Material Contracts.** Subject to the Restructuring Plan, the Budget and the Initial Order, (a) perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect in the ordinary course of business, (c) enforce each such Material Contract in accordance with its terms, (d) take all such action to such end as may be from time to time requested by the Agent, (e) upon request of the Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (f) cause each of its Subsidiaries to do the foregoing.
- 6.20 Restructuring Plan.** Strictly comply with the RISP and generally operate the business of the Loan Parties in a manner consistent with the Restructuring Plan, Forbearance Agreement and Budget approved by the Monitor and the Agent (including meeting all timelines and milestones set out in the RISP, the Forbearance Agreement and the Restructuring Plan) without a negative variance of sales, cash receipts, categorical expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and/or a negative variance of Availability by more than 10%, which shall all be tested each week pursuant to a Variance Report (on an individual and Combined basis) and Borrowing Base Certificate delivered by the Borrower to the Agent.
- 6.21 Compliance with Laws.** Ensure that the representations and warranties set forth in Sections 5.28 and 5.29 shall at all times remain true and accurate in all respects.
- 6.22 Extension Order.** Within 10 days of the Closing Date, the Borrower shall obtain an order under the CCAA extending the stay of proceedings granted in the Initial Order by at least 90 days, which order shall be in form and substance satisfactory to the Agent which for greater certainty shall provide for the payment of all interest payable under the J.S.N. Credit Agreement, including interest on the "*Term Loans*", "*Revolving Loans*" and the "*Permitted Overadvance*" under and as defined in the J.S.N. Credit Agreement.

ARTICLE 7
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

- 7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under any Court order, PPSA, UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances and the Court Charges.
- 7.02 Investments.** Make any Investments, except Permitted Investments existing immediately prior to the Closing Date.
- 7.03 Indebtedness.** (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; or (b) issue and sell any other Equity Interests of any Loan Party unless on terms and conditions acceptable to Agent in its sole discretion, (ii) such Equity Interests provide that all dividends and other Restricted Payments) in respect thereof shall be made solely in additional shares of such Equity Interests, in lieu of cash, (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests and in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations.
- 7.04 Fundamental Changes.** Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, (or agree to do any of the foregoing).
- 7.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions and Permitted Sales all in accordance with the Initial Order and the Restructuring Plan.
- 7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contribution without Agent's prior written consent except:
- (a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party; and

- (b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person.

- 7.07 Prepayments of Indebtedness.** Except as otherwise permitted pursuant to the Initial Order and subject to the Budget, or as consented to by the Agent, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, other than the Pre-Petition Liabilities, the Obligations hereunder, and Permitted Indebtedness provided for in the Budget and permitted by the Initial Order or make any payment in respect of any Subordinated Indebtedness.
- 7.08 Change in Nature of Business.** Engage in any line of business substantially different from the Business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.
- 7.09 Transactions with Affiliates.** Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favourable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate (other than with Forever Jewellery Inc. and P.M.R. Inc. which transactions shall not be permitted under any circumstances without Agent's prior written consent other than as permitted under the Forbearance Agreement), provided that all of the foregoing are in accordance with the Budget but such restriction shall not apply to (a) a transaction between or among the Loan Parties or their foreign Affiliates provided such transactions and amounts are in accordance with the Forbearance Agreement and the Budget and approved by the Agent, (b) advances for commissions, travel and other similar purposes in the ordinary course of business to the CRO and employees in accordance with the Budget and approved by the Agent, and (c) the payment of reasonable fees and out-of-pocket costs and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, the CRO or employees of the Borrower or any of its Subsidiaries in accordance with the Budget and approved by the Agent. For greater certainty, no payments or distributions or loans or guarantees or other transactions shall be made by any applicable Loan Party to or with P.M.R. Inc., Forever Jewellery Inc. (other than as permitted under the Forbearance Agreement), Whitpay Inc. or SUM Investments Inc. without Agent's prior written consent.
- 7.10 Burdensome Agreements.** Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favour of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favour of any holder of Indebtedness permitted under clause (c) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property

financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

- 7.11 Use of Proceeds.** Use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose; or (b) for purposes other than those permitted under this Agreement.
- 7.12 Amendment of Material Documents.** Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than in accordance with the Initial Order and the Restructuring Plan or on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would be materially adverse to the Credit Parties or otherwise would be reasonably likely to have a Material Adverse Effect.
- 7.13 Fiscal Year.** Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP, or as may be approved by the Agent in writing.
- 7.14 Changes in Name or Jurisdiction.** Change its (i) name as it appears in official filings in its jurisdiction of incorporation, organization or formation, (ii) jurisdiction of incorporation, organization or formation, (iii) chief place of business or chief executive office or the location of its records concerning the Collateral, without at least thirty (30) days' prior written notice to Agent and the acknowledgement of Agent that all actions required by Agent, including those to continue the perfection of its Liens, have been completed.
- 7.15 Deposit Accounts; Credit Card Processors.** Open new DDA's or Blocked Accounts unless the Loan Parties shall have delivered to the Agent appropriate DDA Notifications (to the extent requested by Agent pursuant to the provisions of Section 6.13(a) hereof) or Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.13 hereof.
- 7.16 [Financial Covenants – Intentionally deleted]**
- 7.17 DIP Loan Restrictions.** The Loan Parties will not consent to or permit to exist any of the following:
- (a) any order which authorizes the rejection (other than those Leases contemplated in the Restructuring Plan) or assumption of any Lease of the Borrower without the Monitor's approval and the Agent's prior consent, whose consent may not be unreasonably withheld;

- (b) any modification (other than extension of the Initial Order in the ordinary course with the prior written consent of the Agent), stay, vacation or amendment to the Initial Order to which the Agent has not consented in writing;
- (c) a priority claim or administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever), equal or superior to the DIP Charge and Agent's Liens, except with respect to the (i) statutory Liens and charges not capable of being subordinated by the entry of the Initial Order, and (ii) the Court Charges other than the DIP Charge;
- (d) any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations and the Pre-Petition Liabilities, other than (i) the Court Charges, and (ii) Permitted Encumbrances having priority by operation of Applicable Law;
- (e) any order which authorizes the return of any of the Loan Parties' property pursuant to any provision of the CCAA or applicable Law;
- (f) any order which authorizes the payment of any Indebtedness (other than the Pre-Petition Liabilities, Indebtedness reflected in the approved Budget, and other Indebtedness approved by the Monitor and consented to by the Agent) incurred prior to the Petition Date; or
- (g) any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

7.18 Pension Plans. Establish or maintain any Pension Plan.

ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

- (a) Non-Payment. The Borrower or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Loan, or (ii) any interest on any Loan, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or
- (b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.04, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.18, 6.20, 6.22, or Article 7; or (ii) any Guarantor or Personal Guarantor fails to perform or observe any material term, covenant or agreement contained in any Facility Guarantee or Personal Guarantee; or (iii) any of the Loan Parties fails to perform or observe any material term, covenant or agreement contained in any Security Agreement or the J.S.N. Credit Agreement to which it is a party; or

- (c) Other Defaults. Any Loan Party or Personal Guarantor fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document or Court order on its part to be performed or observed and such failure continues for five (5) Business Days; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate or Variance Report shall be incorrect or misleading in any material respect when made or deemed made; or
- (e) Cross-Default. Unless payment is stayed by the Initial Order; (i) any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement), or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or
- (f) Insolvency Proceedings, Etc. Any Loan Party or any of their Subsidiaries institutes, consents to (or takes any action to effectuate or consent to) the institution of or declares its intention to institute any proceeding under any Debtor Relief Law (other than the CCAA Proceedings in respect of the Borrower), or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, receiver and manager, mortgagee in possession, sequestrator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator receiver and manager, mortgagee in possession, sequestrator or similar officer is appointed and the appointment is not immediately stayed and continues undischarged and undismissed for thirty (30) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and is not immediately stayed and continues undismissed

or unstayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding; or

- (g) Inability to Pay Debts; Attachment. (i) Any Guarantor or any of their Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not immediately stayed and released, vacated or fully bonded within ten (10) days after its issuance or levy; or
- (h) Judgments. There is entered against any Loan Party or any of their Subsidiaries (i) one or more Post-Petition final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding C\$250,000 (or the equivalent thereof in any other currency) (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary Post-Petition final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or
- (i) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document or Court Order; or (ii) any Lien purported to be created under any Security Document or Court Order shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document or Court Order; or
- (j) Change of Control. There occurs any Change of Control; or
- (k) Cessation of Business. Except as otherwise expressly permitted hereunder and subject to the Initial Order and under the Restructuring Plan, any Loan Party shall take any action to suspend the operation of its business, shall cease to conduct its business in the ordinary course or advise the Agent that it plans to cease the ordinary conduct of its business, liquidate all or a material portion of its assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of its business other than a Liquidation permitted hereunder; or

- (l) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or
- (m) Breach of Contractual Obligation. Unless stayed by the Initial Order, any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract; or
- (n) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, provincial, territorial, state, municipal, or other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony or indictable offense; or
- (o) Death or Incapacity. The Personal Guarantor dies or is declared incompetent by a court of competent jurisdiction; or
- (p) Guarantee. The termination or attempted termination of any Facility Guarantee except as expressly permitted hereunder or under any other Loan Document; or
- (q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "**Subordinated Provisions**") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or
- (r) Material Adverse Effect. A Material Adverse Effect shall occur; or
- (s) Initial Order:
 - (i) the entry of an order which stays, modifies (other than extensions of the Initial Order with the prior written consent of the Agent), or reverses the Initial Order or which otherwise materially adversely affects the effectiveness of the Initial Order without the express written consent of the Agent;
 - (ii) the entry of any order without the prior written consent of the Agent which provides relief from the automatic stay made under the Initial Order or the CCAA which permits any creditor to realize upon, or to exercise any right

or remedy with respect to, any asset of the Borrower or to terminate any license, franchise, or similar agreement, where the exercise of such right or remedy or such realization or termination would reasonably be likely to have a Material Adverse Effect as determined by the Agent in its Permitted Discretion;

- (iii) the filing of any application by any Loan Party without the express prior written consent of the Agent for the approval of any super-priority claim including in the CCAA Proceedings which is *pari passu* with or senior to the priority of the DIP Charge or Agent's Liens, as the case may be, or there shall arise any such super-priority claim under the CCAA (in each case, other than Court Charges);
- (iv) the payment or other discharge by the Borrower of any Pre-Petition Indebtedness, except as expressly permitted hereunder, or in the Budget or by order in the CCAA Proceeding to which order the Agent has provided their written prior consent;
- (v) the failure of the Borrower (i) to comply with each and all of the terms and conditions of the Initial Order, or (ii) to materially comply with any other order entered in the CCAA Proceeding;
- (vi) the filing of any motion by any Loan Party or the entry of any order including in the CCAA Proceeding: (i) (A) permitting working capital or other financing (other than ordinary course trade credit or unsecured debt) for any Loan Party from any Person other than the Agent (unless the proceeds of such financing are used to pay in full of all Pre-Petition Liabilities and all Obligations (collectively, the "**Unliquidated Claims**"), and the establishment of a reserve account for all Other Liabilities and indemnification obligations hereunder), (B) granting a Lien on, or security interest in any of the Collateral, other than with respect to this Agreement or as otherwise permitted herein (unless such Liens are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Pre-Petition Liabilities, all Obligations, other Unliquidated Claims and indemnification obligations hereunder), or (C) dismissing the CCAA Proceeding, or (ii) the filing of any motion by any Loan Party matters specified in the foregoing clause (i) that is not immediately stayed and dismissed or denied within forty-five (45) days of the date of the filing of such motion (or such later date agreed to in writing by the Agent);
- (vii) the filing of a motion by any Loan Party seeking approval of a Plan of Compromise or the entry of any order including confirming a Plan of Compromise, that does not require repayment in full in cash of all Obligations and Pre Petition Liabilities on the date of a final approval order under the CCAA, and the effectiveness of any such plan or Plan of

Compromise or Plan of Compromise is defeated by the Borrower's creditors;

- (viii) the filing of any pleading by any Person challenging the validity, priority, perfection, or enforceability of the Loan Documents, the Pre-Petition Liabilities, or any Lien granted pursuant to the Initial Order or the Pre-Petition Loan Documents, or (b) any Lien granted pursuant to the Initial Order or the Pre-Petition Loan Documents is determined to be null and void, invalid or unenforceable by Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the CCAA Proceeding or any other proceeding; or
- (ix) the failure of the Agent to receive a Qualified LOI (as defined in the RISP); or
- (t) the failure of the Loan Parties to meet any milestones or deadlines or maturity dates in the RISP or the Forbearance Agreement or is otherwise in default thereunder.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

- (a) declare the Revolving Commitments of each Revolving Lender to make Committed Revolving Loans to be terminated, whereupon such Revolving Commitments and obligation shall be terminated;
- (b) **[Reserved]**
- (c) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;
- (d) capitalize any accrued and unpaid interest by adding such amount to the outstanding principal balance of the Loans, at which time such capitalized amount shall bear interest at the Default Rate;
- (e) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

- (f) seek the appointment of a receiver, receiver-manager, monitor or keeper (a "Receiver") under the laws of Canada or any Province thereof including to take possession of all or any portion of the Collateral of Loan Parties or to operate same and, to the maximum extent permitted by law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed agent of Loan Parties and not Agent and the Lenders, and Agent and the Lenders shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of Collateral of the Loan Parties, to preserve Collateral of the Loan Parties or its value, to carry on or concur in carrying on all or any part of the business of the Loan Parties and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of Collateral of the Loan Parties. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the Loan Parties, enter upon, use and occupy all premises owned or occupied by the Loan Parties wherein Collateral of the Loan Parties may be situated, maintain Collateral of the Loan Parties upon such premises, borrow money on a secured or unsecured basis and use Collateral of the Loan Parties directly in carrying on the Loan Parties' business or as security for loans or advances to enable the Receiver to carry on the Loan Parties' business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Agent, all money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to Agent. Every such Receiver may, in the discretion of Agent, be vested with all or any of the rights and powers of Agent and the Lenders. Agent may, either directly or through its nominees, exercise any or all powers and rights given to a Receiver by virtue of the foregoing provisions of this paragraph;
- (g) The Agent or any Lender may purchase, in any public or private sale conducted by the Agent (whether by judicial action or otherwise) in accordance with applicable Law, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Agent, upon written consent of the Required Lenders, to Credit Bid (in an amount and on such terms as may be directed by the Required Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders.

provided, however, that upon the occurrence of any Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Agent or any Lender; and

provided further that, any exercise of remedies shall be subject to approval in the CCAA Proceedings and shall only be requested upon seven (7) Business Days' prior written notice to the Loan Parties and the Monitor (unless the Event of Default occurred under

Section 8.01(a), 8.01(f), 8.01(g), 8.01(k), or 8.01(s), in which case the remedies under Section 8.02 require 1 Business Day's notice to the Loan Parties or the Monitor).

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

- 8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order, in each case whether or not such Obligations are allowed or allowable in any bankruptcy or insolvency proceeding or under any Debtor Relief Law:

First, to payment of that portion of the Pre-Petition Liabilities constituting "*Permitted Overadvances*" under and as defined in the J.S.N. Credit Agreement constituting unpaid principal rateably among the "*Revolving Lenders*" thereunder in proportion to their respective amounts described in this clause payable to them until such amount has been eliminated in full;

Next, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article 3 and Section 2.09) payable to the Agent;

Next, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including fees, charges and disbursements of counsel to the Lenders and amounts payable under Article 3), rateably among them in proportion to the amounts described in this clause payable to them;

Next, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances hereunder;

Next, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Revolving Loans and other Obligations and fees, rateably among the Revolving Lenders in proportion to the respective amounts described in this clause payable to them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Committed Revolving Loans, rateably among the Revolving Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations, but excluding any Other

Liabilities), rateably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations arising from Cash Management Services to the extent secured under the Security Documents, rateably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Obligations arising from Bank Products to the extent secured under the Security Documents, rateably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Pre-Petition Liabilities, including firstly, all accrued and unpaid interest on the "*Permitted Overadvance*" under and as defined in the J.S.N. Credit Agreement and all fees and amounts payable under the Forbearance Agreement, and secondly, all other interest, fees, costs, expenses and principal owing under the J.S.N. Credit Agreement in accordance with the provisions of the J.S.N. Credit Agreement; rateably among the Credit Parties in proportion to the respective amounts described in the J.S.N. Credit Agreement held by them; and

Last, the balance, if any, after all of the "*Obligations*" hereunder and under the J.S.N. Credit Agreement have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

ARTICLE 9 THE AGENT

- 9.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints Salus to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the terms "*agent*" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.
- 9.02 Rights as a Lender.** The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term "**Lender**" or "**Lenders**" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any

other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02); or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties or a Lender. Upon the occurrence of a Default or Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

- 9.04 Reliance by Agent.** The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for any Credit Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.
- 9.05 Delegation of Duties.** The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Agent. The Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.
- 9.06 Resignation of Agent.** The Agent may at any time give written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a financial institution with an office in Canada or the United States, or an Affiliate of any such financial institution with an office in Canada or the United States. If no such successor shall have been so appointed by the Required

Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

- 9.07 Non-Reliance on Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.
- 9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agent or Documentation Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent or a Lender hereunder.
- 9.09 Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein

expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the Agent and such Credit Parties hereunder) allowed in such judicial proceeding; and
- (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, receiver and manager, mortgagee in possession, or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guarantee Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its Permitted Discretion:

- (a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;
- (b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and
- (c) to release any Guarantor from its obligations under the Facility Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guarantee pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guarantee, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements. By signing this Agreement, each Lender:

- (a) agrees to furnish the Agent (and thereafter at such frequency as the Agent may reasonably request) with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender and, if such notice is received, the Agent shall be entitled to assume that the only amounts due to such Lender on account of Other Liabilities is the amount set forth in such notice;
- (b) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all Borrowing Base Certificates, financial statements and other Borrower Materials required to be delivered by the Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "**Reports**");
- (c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials, and shall not be liable for any information contained in any Borrower Materials (including any Report);
- (d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;
- (e) agrees to keep all Reports and other Borrower Materials confidential in accordance with the provisions of Section 10.07 hereof; and

- (f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report and other Borrower Materials in connection with any Borrowings that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including legal costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders in assets which, in accordance with applicable Law, can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agent, and any Related Party, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, and their Related Parties' gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

9.16 Co-Syndication Agents; Documentation Agent and Co-Lead Arrangers. Notwithstanding the provisions of this Agreement or any of the other Loan Documents, no Person who is or becomes a Co-Syndication Agent or a Documentation Agent nor the Co-Lead Arrangers shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

9.17 [Reserved]

**ARTICLE 10
MISCELLANEOUS**

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;
- (b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Revolving Commitments hereunder or under any other Loan Document without the written Consent of such Revolving Lender;
- (c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the applicable rate of interest that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written Consent of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;
- (d) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;
- (e) change any provision of this Section or the definition of "*Applicable Lenders*", "*Required Lenders*", "*Required Revolving Lenders*", or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

- (f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;
- (g) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;
- (h) increase the Aggregate Revolving Commitments without the written Consent of each Revolving Lender;
- (i) change the definition of the term "*Borrowing Base*" or any component definition thereof as it relates to the Borrower if as a result thereof the amounts available to be borrowed by the Borrower would be increased without the written Consent of each Lender, provided that the foregoing shall not limit the Permitted Discretion of the Agent to change, establish or eliminate any Reserves;
- (j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and
- (k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (ii) the Pricing Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Deteriorating Lender or Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Lender may not be increased or extended without the consent of such Lender, and (y) any waiver, amendment or modification requiring the consent of all Lenders.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or

the release of Collateral or any Loan Party, and (y) any Loan Document may be amended and waived with the written consent of the Agent at the request of the Borrower without the need to obtain the consent of any Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

10.02 Notices; Effectiveness; Electronic Communications.

- (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:
 - (i) if to the Loan Parties or the Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and
 - (ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.
- (b) Timing. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).
- (c) Electronic Communications. Notices and other communications to the Loan Parties and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent may, in its Permitted Discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not

sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

- (d) The Internet. In no event shall the Agent or any of its Related Parties (each, an "**Agent Party**") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses or any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the internet.
- (e) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.
- (f) Reliance by Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

- (a) Costs and Expenses. The Borrower shall pay all Credit Party Expenses.
- (b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, including any indemnities given by any Indemnatee in connection herewith or any Pre-Petition Loan Document, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnatee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnatee; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction.
- (c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agent (or any such

sub-agent), or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

- (d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.
- (e) Payments. All amounts due under this Section shall be payable on demand therefor.
- (f) Survival. The agreements in this Section shall survive the resignation of any Agent, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its Permitted Discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate

per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

- (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) Assignments by Lenders. Any Lender may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans; provided that any such assignment shall be subject to the following conditions:
 - (i) Minimum Amounts:
 - (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and
 - (B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than C\$5,000,000 (or the equivalent thereof in U.S. Dollars) unless the Agent otherwise consents; provided,

however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

- (ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;
- (iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:
 - (A) the consent of the Agent; and
 - (B) the consent of the Agent shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.
- (iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of C\$3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from the Lenders having been a Defaulting Lender. Upon request, the Borrower (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under

this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

- (c) Register. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.
- (d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section and not being a Defaulting Lender hereunder or under the J.S.N. Credit Agreement, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b) and to the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender, acting for this purpose as an agent of the Loan Parties, shall maintain at its offices a record of each agreement or instrument effecting any participation and a register for the recordation of the names and addresses of its Participants and their rights with respect to principal amounts and other Obligations from time to time (each a "**Participation Register**"). The entries in

each Participation Register shall be conclusive absent manifest error and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in a Participant Register as a Participant for all purposes of this Agreement (including, for the avoidance of doubt, for purposes of entitlement to benefits under Section 3.01, 3.04 and 10.08). The Participation Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

- (e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01 as though it were a Lender.
- (f) Certain Pledges. Any Lender may at any time pledge, hypothecate or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge, hypothecate or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge, hypothecate or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
- (g) Electronic Execution of Assignments. The words "execution", "signed", "signature", and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the PPSA and the *Electronic Commerce Act, 2000* (Ontario).
- (h) Transactions by Salus Entity. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, (A) neither Salus nor any Affiliate thereof (each, a "Salus Entity") shall be required to comply with this Section 10.06 in connection with any transaction involving any other Salus Entity or any of its or their lenders or funding or financing sources, and no Salus Entity shall have any obligation to disclose any such transaction to any Person, and (B) there shall be no limitation or restriction on (i) the ability of any Salus Entity to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, any Loan, or any other Obligation to any other Salus Entity or any lender or financing or funding source of a Salus Entity or (ii) any such lender's or funding or financing source's ability to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, any Loan, or any other Obligation; provided,

however, that Salus shall continue to be liable as a "*Lender*" under this Agreement and the other Loan Documents unless such other Person complies with the provisions of this Agreement to become a "*Lender*".

- 10.07 Treatment of Certain Information; Confidentiality.** Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, funding sources, lawyers, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the Insurance Bureau of Canada or the National Association of Insurance Commissioners), (c) to the extent required by applicable Law or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) to their auditors in connection with any audit, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "**Information**" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information, and (c) it will handle such material non-public information in accordance with applicable Law.

- 10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to

property of a Loan Party, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

- 10.09 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf., or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.
- 10.10 Survival.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or

unsatisfied. Further, the provisions of Sections 3.01, 3.04, and 10.04 and Article 9 shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities and (z) any Obligations that may thereafter arise under Section 10.04.

10.11 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.12 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, then the Borrower may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Agent the assignment fee specified in Section 10.06;
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and
- (d) such assignment does not conflict with applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.13 Governing Law; Jurisdiction; Etc.

- (a) GOVERNING LAW. THIS AGREEMENT SHALL BE EXCLUSIVELY (WITHOUT REGARD TO RULES OR PRINCIPLES RELATING TO CONFLICTS OF LAWS) GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.
- (b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE PROVINCE OF ONTARIO IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.
- (c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENCE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.
- (d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL

AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

- (e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT LOCATED IN THE PROVINCE OF ONTARIO AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favour of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those

obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by Law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.16 Anti-Money Laundering Legislation.

- (a) Each Loan Party acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *USA Patriot Act* (Title III of Pub. L. 1007-56 (signed into law October 26, 2001), and other applicable anti-money laundering, anti-terrorist financing, government sanction and “*know your client*” laws, whether within Canada, the United States or elsewhere (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and Agent may be required to obtain, verify and record information regarding each Loan Party, its respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Loan Party, and the transactions contemplated hereby. The Loan Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent, or any prospective assign or participant of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.
- (b) If Agent has ascertained the identity of the Loan Parties or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then Agent:
 - (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and Agent within the meaning of applicable AML Legislation; and
 - (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any

Lender, or to confirm the completeness or accuracy of any information it obtains from the Loan Parties or any such authorized signatory in doing so.

- 10.17 USA PATRIOT Act Notice.** Each Lender that is subject to the *Patriot Act* (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Patriot Act***"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the *Patriot Act*. Each Loan Party is in compliance, in all material respects, with the *Patriot Act*. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "*know you customer*" and anti-money laundering rules and regulations, including the *Patriot Act*.
- 10.18 Economic Sanction Laws.** Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate any applicable foreign asset control or economic sanctions regulations, including the provisions of the *United Nations Act* (Canada), the *Special Economic Measures Act* (Canada), the *Criminal Code* (Canada) or any other economic sanctions laws administered by Foreign Affairs and International Trade Canada or the Department of Public Safety Canada (collectively, the "**Economic Sanction Laws**") or any enabling legislation or executive order relating thereto. Furthermore, none of the Borrower or their Affiliates (a) is a Person designated by the Canadian government on any list set out in any Economic Sanction Law including the United Nations Al-Qaida and Taliban Regulations, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism or the *Criminal Code* (Canada) with which a Canadian Person cannot deal with or otherwise engage in business transactions (or is controlled by or acts, directly or indirectly, for or on behalf of any such Person) or (b) is a Person who is otherwise the target of Canadian economic sanctions laws such that a Canadian Person cannot deal or otherwise engage in business transactions with such Person.
- 10.19 Time of the Essence.** Time is of the essence of the Loan Documents.
- 10.20 Press Releases.**
- (a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.
 - (b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material, including any "*tombstone*" or comparable advertising, on its

website or in other marketing materials of Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

10.21 Additional Waivers.

- (a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by applicable Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.
- (b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defence or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).
- (c) To the fullest extent permitted by applicable Law, each Loan Party waives any defence based on or arising out of any defence of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election,

foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defence arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

10.22 Guarantee.

- (a) Each Guarantor is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Loan Party shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Loan Party hereunder or other Obligations incurred directly and primarily by any other Loan Party (an "**Accommodation Payment**"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Party in an amount, for each of such other Loan Party, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Applicable Percentage ("**Allocable Amount**") and the denominator of which is the sum of the Allocable Amounts of all of the Loan Party. As of any date of determination, the "*Allocable Amount*" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without rendering such Loan Party insolvent.

- (b) Each Guarantor, subject to any limitations of liability in the Personal Guarantee or any other applicable Facility Guarantee, hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all Obligations of each other party hereto.
- (c) Each Guarantor hereby absolutely, unconditionally and irrevocably waives (i) promptness, diligence, notice of acceptance, notice of presentment of payment and any other notice hereunder, (ii) demand of payment, protest, notice of dishonor or nonpayment, notice of the present and future amount of the Obligations and any other notice with respect to the Obligations, (iii) any requirement that Agent or any Lender protect, secure, perfect or insure any security interest or Lien or any property subject thereto or exhaust any right or take any action against any other Loan Party, or any Person or any Collateral, (iv) any other action, event or precondition to the enforcement hereof or the performance by each such Guarantor of the Obligations, and (v) any defense arising by any lack of capacity or authority or any other defense of any Loan Party or any notice, demand or defense by reason of cessation from any cause of Obligations other than payment and performance in full of the Obligations by the Loan Parties and any defense that any other guarantee or security was or was to be obtained by Agent.
- (d) No invalidity, irregularity, voidableness, voidness or unenforceability of this Agreement or any other Loan Document or any other agreement or instrument relating thereto, or of all or any part of the Obligations or of any collateral security therefor shall affect, impair or be a defense hereunder.
- (e) The Guaranty hereunder is one of payment and performance, not collection, and the obligations of each Guarantor hereunder are independent of the Obligations of the other Loan Parties, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce the terms and conditions of this Section, irrespective of whether any action is brought against any other Loan Party or other Persons or whether any other Loan Party or other Persons are joined in any such action or actions. Each Guarantor waives any right to require that any resort be had by Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit account or credit on the books of Agent or any Lender in favor of any Loan Party or any other Person. No election to proceed in one form of action or proceedings, or against any Person, or on any Obligations, shall constitute a waiver of Agent's right to proceed in any other form of action or proceeding or against any other Person unless Agent has expressed any such waiver in writing. Without limiting the generality of the foregoing, no action or proceeding by Agent against any Loan Party under any document evidencing or securing indebtedness of any Loan Party to Agent shall diminish the liability of any Guarantor hereunder, except to the extent Agent receives actual payment on account of Obligations by such action or proceeding,

notwithstanding the effect of any such election, action or proceeding upon the right of subrogation of any Guarantor in respect of any Loan Party.

- (f) As an original and independent obligation under this Guaranty, each Guarantor shall (a) indemnify, defend and hold Agent harmless and each of the Lenders and keep Agent and each of the Lenders indemnified against all costs, losses, expenses and liabilities of whatever kind resulting from the failure by any Loan Party to make due and punctual payment of any of the Obligations or resulting from any of the Obligations being or becoming void, voidable, unenforceable or ineffective against any other Loan Party (including, but without limitation, all legal and other costs, charges and expenses incurred by Agent and each of the Lenders, or any of them in connection with preserving or enforcing, or attempting to preserve or enforce, its rights under this Guaranty), except to the extent that any of the same results from the gross negligence or willful misconduct by Agent or any Lender; and (b) pay on demand the amount of such costs, losses, expenses and liabilities whether or not Agent or any of the Lenders have attempted to enforce any rights against any Loan Party or any other Person or otherwise.
- (g) The liability of each Guarantor hereunder shall be absolute, unlimited (except the Personal Guarantor) and unconditional and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any claim, defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any other Obligation or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor shall not be discharged or impaired, released, limited or otherwise affected by:
 - (i) any change in the manner, place or terms of payment or performance, and/or any change or extension of the time of payment or performance of, release, renewal or alteration of, or any new agreements relating to any Obligation, any security therefor, or any liability incurred directly or indirectly in respect thereof, or any rescission of, or amendment, waiver or other modification of, or any consent to departure from, this Agreement or any other Loan Document, including any increase in the Obligations resulting from the extension of additional credit to Borrower or otherwise;
 - (ii) any sale, exchange, release, surrender, loss, abandonment, realization upon any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, all or any of the Obligations, and/or any offset there against, or failure to perfect, or continue the perfection of, any Lien in any such property, or delay in the perfection of any such Lien, or any amendment or waiver of or consent to departure from any other guaranty for all or any of the Obligations;
 - (iii) the failure of Agent or any Lender to assert any claim or demand or to enforce any right or remedy against any Loan Party or any other Person

under the provisions of this Agreement or any other Loan Document or any other document or instrument executed and delivered in connection herewith or therewith;

- (iv) any settlement or compromise of any Obligation, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and any subordination of the payment of all or any part thereof to the payment of any obligation (whether due or not) of any Loan Party to creditors of any Loan Party other than any other Loan Party;
 - (v) any manner of application of Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Obligations or any other assets of any Loan Party; and
 - (vi) any other agreements or circumstance of any nature whatsoever that may or might in any manner or to any extent vary the risk of any Guarantor, or that might otherwise at law or in equity constitute a defense available to, or a discharge of, the Guaranty hereunder and/or the obligations of any Guarantor, or a defense to, or discharge of, any Loan Party or any other Person or party hereto or the Obligations or otherwise with respect to the Loans or any other financial accommodations to Borrower pursuant to this Agreement and/or the other Loan Documents.
- (h) Agent shall have the right to take any action set forth in any provision of this Agreement without notice to or the consent of any Guarantor and each Guarantor expressly waives any right to notice of, consent to, knowledge of and participation in any agreements relating to any such action or any other present or future event relating to Obligations whether under this Agreement or otherwise or any right to challenge or question any of the above and waives any defenses of such Guarantor which might arise as a result of such actions.
- (i) Agent may at any time and from time to time (whether prior to or after the revocation or termination of this Agreement) without the consent of, or notice to, any Guarantor, and without incurring responsibility to any Guarantor or impairing or releasing the Obligations, apply any sums by whomsoever paid or howsoever realized to any Obligations regardless of what Obligations remain unpaid.
- (j) The Guaranty provisions herein contained shall continue to be effective or be automatically reinstated, as the case may be, if a claim is ever made upon Agent or any Lender for repayment or recovery of any amount or amounts received by such Person in payment or on account of any of the Obligations and such Person repays all or part of said amount for any reason whatsoever, including, without limitation, by reason of any judgment, decree or order of any court or administrative body having jurisdiction over such Person or the respective property of each, or any settlement or compromise of any claim effected by such

Person with any such claimant (including any Loan Party); and in such event each Guarantor hereby agrees that any such judgment, decree, order, settlement or compromise or other circumstances shall be binding upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any Obligation, and each Guarantor shall be and remain liable to the Agent and/or the Lenders for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person(s).

- (k) Agent shall not be required to marshal any assets in favor of any Loan Party, or against or in payment of Obligations.
- (l) No Guarantor shall be entitled to claim against any present or future security held by Agent from any Person for Obligations in priority to or equally with any claim of Agent, or assert any claim for any liability of any Loan Party to any Guarantor in priority to or equally with claims of Agent for Obligations, and no Guarantor shall be entitled to compete with Agent with respect to, or to advance any equal or prior claim to any security held by Agent for Obligations.
- (m) If any Loan Party makes any payment to Agent, which payment is wholly or partly subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any Person under any federal, state, provincial or territorial statute or at common law or under equitable principles, then to the extent of such payment, the Obligation intended to be paid shall be revived and continued in full force and effect as if the payment had not been made, and the resulting revived Obligation shall continue to be guaranteed, uninterrupted, by each Guarantor hereunder.
- (n) All present and future monies payable by any Loan Party to any other Loan Party, whether arising out of a right of subrogation, reimbursement, contribution, indemnification or otherwise, are assigned to the Agent, for the benefit of the Lenders as additional security for such Guarantor's liability to the Lenders hereunder and are postponed and subordinated to the Agent and Lenders' prior right to payment in full of Obligations. Except to the extent prohibited otherwise by this Agreement, all monies received by any Loan Party from any other Loan Party shall be held by such receiving Loan Party as agent and trustee for the Agent. This assignment, postponement and subordination shall only terminate when the Obligations are paid in full in cash (other than contingent obligations not then due and payable), all Commitments are irrevocably terminated and this Agreement is irrevocably terminated.
- (o) Each Loan Party acknowledges this assignment, postponement and subordination and, except as otherwise set forth herein, agrees to make no payments to any other Loan Party without the prior written consent of Agent. Each Loan Party agrees to give full effect to the provisions hereof.

- (p) Upon the occurrence and during the continuance of any Event of Default, Agent may and upon written request of the Required Lenders shall, without notice to or demand upon any Loan Party or any other Person, declare any obligations of each Guarantor hereunder immediately due and payable, and shall be entitled to enforce the obligations of each Guarantor. Upon such declaration by Agent, Agent and the Lenders are hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Agent or the Lenders to or for the credit or the account of any Guarantor against any and all of the obligations of each Guarantor now or hereafter existing hereunder, whether or not Agent or the Lenders shall have made any demand hereunder against any other Loan Party and although such obligations may be contingent and unmatured. The rights of Agent and the Lenders hereunder are in addition to other rights and remedies (including other rights of set-off) which Agent and the Lenders may have. Upon such declaration by Agent, with respect to any claims (other than those claims referred to in the immediately preceding paragraph) of any Guarantor against any other Loan Party (the "Claims"), Agent shall have the full right on the part of Agent in its own name or in the name of such Guarantor to collect and enforce such Claims by legal action, proof of debt in bankruptcy or other liquidation proceedings, vote in any proceeding for the arrangement of debts at any time proposed, or otherwise, Agent and each of its officers being hereby irrevocably constituted attorneys-in-fact for each Guarantor for the purpose of such enforcement and for the purpose of endorsing in the name of each Guarantor any instrument for the payment of money. Each Guarantor will receive as trustee for Agent and will pay to Agent forthwith upon receipt thereof any amounts which such Guarantor may receive from any Loan Party on account of the Claims. Each Guarantor agrees that at no time hereafter will any of the Claims be represented by any notes, other negotiable instruments or writings, except and in such event they shall either be made payable to Agent, or if payable to any Guarantor, shall forthwith be endorsed by such Guarantor to Agent. Each Guarantor agrees that no payment on account of the Claims or any security interest therein shall be created, received, accepted or retained during the continuance of any Event of Default nor shall any financing statement be filed with respect thereto by any Guarantor.
- (q) Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by any Loan Party or others with respect to any of the Obligations shall, if the statute of limitations in favor of any Guarantor against Agent or the Lenders shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.
- (r) All amounts due, owing and unpaid from time to time by any Guarantor hereunder shall bear interest at the interest rate per annum then chargeable with respect to the Loans.

- (s) Each Guarantor acknowledges receipt of a copy of each of this Agreement, the other Loan Documents and the Pre-Petition Loan Documents. Each Guarantor has made an independent investigation of the Loan Parties and of the financial condition of the Loan Parties. Neither Agent nor any Lender has made and neither Agent nor any Lender does make any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Loan Party, nor has Agent or any Lender made any representations or warranties as to the amount or nature of the Obligations of any Loan Party to which this Section applies as specifically herein set forth, nor has Agent or any Lender or any officer, agent or employee of Agent or any Lender or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.
- (t) The provisions of this Section shall remain in effect until the indefeasible payment in full in cash of all Obligations (other than contingent obligations not then due and payable), the termination of all Commitments and irrevocable termination of this Agreement.

10.23 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

10.24 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.25 Amendment and Restatement.

- (a) Replacements. This Agreement supersedes and replaces all prior discussions and agreements (if any) describing the terms and conditions of any credit facilities established by the Agent and Lenders in favour of the Borrower hereunder and which is in addition to, and not in any way a replacement of, the J.S.N. Credit Agreement.
- (b) Existing Obligations. Each Loan Party hereby acknowledges, confirms and agrees that such Loan Party continues to be indebted to the Agent and Lenders for loans and advances made under the J.S.N. Credit Agreement, together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally

owing by Loan Parties to the Agent and Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

- (c) Acknowledgement of Security Interests and Reaffirmation. Each Loan Party hereby acknowledges, confirms and agrees that the Agent and Lenders have and shall continue to have a security interest in and Lien upon the property and assets granted to them pursuant to the security documents heretofore granted to them in connection with the J.S.N. Credit Agreement, including the Pre-Petition Loan Documents, which shall secure any and all of their "*Obligations*" thereunder and any and all of their *Obligations* hereunder, including in respect of any indemnities of the Loan Parties in respect of any indemnities provided by any of the "*Indemnities*" hereunder or thereunder, as well as any Lien against the Collateral of BM granted under the Initial Order (which shall only secure the DIP *Obligations* and shall not secure any Pre-Petition Liabilities) or under any Loan Documents or under any Pre-Petition Loan Documents or otherwise granted to or held by them. The Liens of the Agent and the Lender in the "*Collateral*" shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such Liens whether under the J.S.N. Credit Agreement, this Agreement, any other Loan Documents or any other Pre-Petition Loan Documents. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, no Pre-Petition Liabilities shall be secured by the DIP Charge. For greater certainty, to induce each Lender and Agent to enter into this Agreement, each of the undersigned hereby acknowledges and reaffirms its "*Obligations*" under each Pre-Petition Loan Document to which it is a party, including, without limitation, any grant, pledge or assignment of a Lien or security interest, as applicable, contained therein, in each case as amended, restated, supplemented or otherwise modified prior to or as of the date hereof (collectively, the "**Reaffirmed Documents**"). Effective upon the entry of the Initial Order, the Reaffirmed Documents and all financing statements, mortgages, collateral assignments, notices of lien, control agreements, all existing filings with any intellectual property office with respect to the recordation of an interest in the intellectual property of any of the Loan Parties which were filed by the Agent and all other similar documents, instruments or agreements granting, establishing or evidencing a Lien on the "*Collateral*" under any Pre-Petition Loan Document, shall each be deemed to be delivered and/or filed (other than any UK Pre-Petition Loan Documents) in connection with this Agreement, shall also constitute Loan Documents hereunder, shall secure all *Obligations* of the Loan Parties in respect of the DIP *Obligations*, and shall each remain in full force and effect without any further action by any of the Loan Parties and each of the Loan Parties hereby covenants, agrees and undertakes to execute and deliver any and all additional guarantees, agreements and ancillary documents required by the Agent to give full force and effect to all of the foregoing.

Furthermore, any reference to any of the Guarantors as a "*Borrower*", "*Debtor*", "*Obligor*" or other similar reference, under any of the Pre-Petition Loan Documents, shall include and be deemed to each of the Guarantors hereunder and their "*Obligations*" as a "*Guarantor*" hereunder and all such Pre-Petition Loan

Documents which secures their "*Obligations*" thereunder as a "*Borrower*" shall also secure all of their Obligations hereunder as a "*Guarantor*" and each Pre-Petition Loan Document shall be, and shall be deemed to be, hereby amended accordingly to give full force and effect to all of the above.

[2 SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

Borrower:

BEN MOSS JEWELLERS WESTERN CANADA LTD.

By: 

Name: JOSEPH SHILON
Authorized Signing Officer

Guarantor:

J.S.N. JEWELLERY INC.

By: 

Name: JOSEPH SHILON
Authorized Signing Officer

Guarantor:

J.S.N. JEWELLERY UK LIMITED

By: 

Name: JOSEPH SHILON
Authorized Signing Officer

Guarantor:

GMJ CORP.

By: 

Name: JOSEPH SHILON
Authorized Signing Officer

Guarantor:

2373138 ONTARIO INC.

By: 

Name: JOSEPH SHILON
Authorized Signing Officer

Guarantor:

FOREVER JEWELLERY INC.

By: _____

Name: _____
Authorized Signing Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

Borrower:

BEN MOSS JEWELLERS WESTERN CANADA LTD.

By: _____

Name: _____

Authorized Signing Officer

Guarantor:

J.S.N. JEWELLERY INC.

By: _____

Name: _____

Authorized Signing Officer

Guarantor:

J.S.N. JEWELLERY UK LIMITED

By: _____

Name: _____

Authorized Signing Officer

Guarantor:

GMJ CORP.

By: _____

Name: _____

Authorized Signing Officer

Guarantor:

2373138 ONTARIO INC.

By: _____

Name: _____

Authorized Signing Officer

Guarantor:

FOREVER JEWELLERY INC.

By: _____

Name: _____

Authorized Signing Officer

Guarantor:

ALWAYS AND FOREVER FAMILY COLLECTION INCORPORATED

By: _____

Name:

Authorized Signing Officer

Guarantor:

P.M.R. INC.

By: _____

Name: *Joseph Shilon*

Authorized Signing Officer

Witness Signature

Print Name:

Address:

*HARVEY CHAITON**5000 YONGE ST., 10TH FLOOR**TORONTO, ONTARIO**M2N 7E9*

Guarantor:

JOSEPH SHILON

Administrative Agent and as Collateral Agent:

SALUS CAPITAL PARTNERS, LLC

By: _____

Name:

Authorized Signing Officer

Lender:

SALUS CLO 2012-1, LTD.

By: _____

Name:

Authorized Signing Officer

Guarantor:

ALWAYS AND FOREVER FAMILY COLLECTION INCORPORATED

By: _____

Name: Joseph Shilon
Authorized Signing Officer

Guarantor:

P.M.R. INC.

By: _____

Name: _____
Authorized Signing Officer

Witness Signature

Print Name: _____

Address: _____

) Guarantor:

)

)

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)

JOSEPH SHILON

Administrative Agent and as Collateral Agent:

SALUS CAPITAL PARTNERS, LLC

By: _____

Name: _____
Authorized Signing Officer

Lender:

SALUS CLO 2012-1, LTD.

By: _____

Name: _____
Authorized Signing Officer

Guarantor:

ALWAYS AND FOREVER FAMILY COLLECTION INCORPORATED

By: _____

Name:

Authorized Signing Officer

Guarantor:

P.M.R. INC.

By: _____

Name:

Authorized Signing Officer

Witness Signature

Print Name: _____

Address: _____

) Guarantor:

)

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)

JOSEPH SHILON

Administrative Agent and as Collateral Agent:

SALUS CAPITAL PARTNERS, LLC

By: _____

Name: Kyle C. Shonak

Authorized Signing Officer

Lender:

SALUS CLO 2012-1, LTD.

By: _____

Name: Kyle C. Shonak

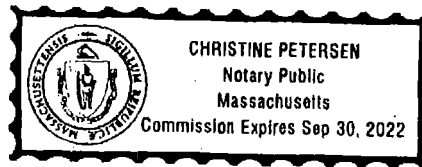
Authorized Signing Officer

EXHIBIT “I”

Attached is Exhibit "I" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



ONTARIO PPSA SEARCH SUMMARY
Personal Property Security Act (Ontario)

Search services provided by



AIRD & BERLIS LLP
FOREVER JEWELLERY INC.

REQUESTOR

BUSINESS DEBTOR

TRANSACTION ID 1294827

NUMBER OF LIEN(S) 1

DATE SEARCHED 07MAR2016

FILE CURRENCY 06MAR2016

1. File Number		688069296	Debtors	Secured Parties	Collateral Classifications
Type		PPSA - 5 yrs	FOREVER JEWELLERY INC.	SALUS CAPITAL PARTNERS, LLC	Inventory
Date Filed		2013-06-25			Equipment
Expiry Date		2018-06-25			Accounts
Registration #		20130625 1552 1862 8422			Other
					Motor Vehicle

*** END OF REPORT ***

EXHIBIT “J”

Attached is Exhibit "J" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Sam Babe
Direct: 416.865.7718
E-mail: sbabe@airdberlis.com

May 16, 2016

BY EMAIL

Forever Jewellery Inc.
64 Jardin Drive, Unit 7
Concord, Ontario L4K 3P3

Dear Sirs/Mesdames,

Re: **Guarantee of Salus Capital Partners, LLC Loans to J.S.N. Jewellery Inc.,
J.S.N. Jewellery UK Limited, GMJ Corp. and Ben Moss Jewellers Western
Canada Ltd. (the "Borrowers")**

We are the solicitors for Salus Capital Partners, LLC ("**Salus**") in connection with its lending arrangements with the Borrowers. The Borrowers are in default of their obligations owing to the Salus and Salus has demanded repayment of the loans owed to it by the Borrowers.

By way of a Guarantee Agreement dated July 18, 2103 (the "**Guarantee**"), Forever Jewellery Inc. (the "**Guarantor**") irrevocably and unconditionally guaranteed payment of each and all the obligations of the Borrowers to Salus, up to a maximum principal sum equal to the sum of all amounts due and payable by the Guarantor to J.S.N. Jewellery Inc (the "**Guaranteed Indebtedness**").

The Borrowers are jointly and severally indebted to Salus and the other lenders (collectively, the "**Lenders**") under credit facilities (the "**Credit Facilities**") provided pursuant to the credit agreement dated as of July 18, 2013 among, *inter alia*, Salus, as lender and administrative agent, and the Borrowers, and 2373138 Ontario Inc., Forever Jewellery Inc. and Joseph Shilon, as guarantors (as amended, supplemented, restated or replaced from time to time, the "**Credit Agreement**").

The following amounts are owing for principal and interest pursuant to the Credit Facilities as at May 12, 2016 (collectively, the "**Facility Indebtedness**"):

Revolving Loan
Principal
Interest

CAD \$28,177,463.17
CAD \$91,998.60

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

USD Revolving Loan

Principal

US \$19,226,321.62

Interest

US \$63,969.21

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

Term Loan A

Principal

CAD \$4,750,000.00

Interest

CAD \$21295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

Term Loan B

Principal

CAD \$4,871,987.17

Interest

CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

Term Loan C

Principal

US \$3,500,000.00

Interest

US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

In addition to the Facilities Indebtedness, all fees arising under the Credit Agreement for which the Debtor is responsible, any and all costs and expenses incurred by Salus (including, without limitation, Salus' legal and other professional fees herein) and the face amounts of any outstanding letters of credit are owing under the Credit Agreement.

The Guarantee is secured by, among other things, a Canadian General Security Agreement granted by the Guarantor dated July 18, 2013 in favour of Salus, as collateral agent, by, among others, the Guarantor (the "Security").

As you are already aware, the Borrowers are in breach of certain of their covenants under the Credit Agreement, which breaches constitute an Event of Default. As a result, the Debtors' right to receive any further extension or other accommodations of credit from the Lenders, pursuant to the Credit Facilities or otherwise, has been terminated.

On behalf of Salus, we hereby formally demand payment of the amount of the Guaranteed Indebtedness, together with interest as set out above from the date hereof to the date of payment in full, by not later than ten (10) days from the date hereof. Interest will continue to accrue on the Guaranteed Indebtedness at the rates set out above.

If payment of the Guaranteed Indebtedness is not received by the date set out above, Salus will take such steps as it may consider necessary or appropriate to collect the Guaranteed Indebtedness, including, without limitation, the appointment of a receiver and/or manager of the Guarantor.

On behalf of Salus, we enclose a Notice of Intention to Enforce Security delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (the "BIA Notice").

We reserve our right to take proceedings within the 10-day period associated with the BIA Notices, if circumstances warrant such proceedings.

Yours very truly,

AIRD & BERLIS LLP



Sam Babe
encl.

cc. Kyle Shonak
cc. Andrew Punier
cc. Aaron Miller

25941384.1

NOTICE OF INTENTION TO ENFORCE SECURITY
(Bankruptcy and Insolvency Act, Subsection 244(1))
 By Email

TO: Forever Jewellery Inc.
 64 Jardin Drive, Unit 7
 Concord, Ontario L4K 3P3

an insolvent company

TAKE NOTICE that:

1. Salus Capital Partners, LLC (the "**Lender**"), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
 - (a) all of the undertaking, property and assets of Forever Jewellery Inc. (the "**Debtor**"), including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other personal and moveable property of the Debtor.
2. The security that is to be enforced is in the form of, *inter alia*, a Canadian General Security Agreement dated July 18, 2013 granted in favour of the Lender, as collateral agent, by, among others, the Debtor (the "**Security**").
3. The total amount of indebtedness secured by the Security, as at May 12, 2016 is as follows:

CAD Revolving Loan

Principal
 Interest

CAD \$28,177,463.17
CAD \$91,998.60

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

USD Revolving Loan

Principal
 Interest

US \$19,226,321.62
US \$63,969.21

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

Term Loan A

Principal
 Interest

CAD \$4,750,000.00
CAD \$21295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

Term Loan B

Principal

CAD \$4,871,987.17

Interest

CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

Term Loan C

Principal

US \$3,500,000.00

Interest

US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

together with all fees arising under the Credit Agreement dated as of July 18, 2013, as amended, for which the Borrowers thereunder are responsible, any and all costs and expenses incurred by the Lender (including, without limitation, the Lender's legal and other professional fees herein) and the face amounts of any outstanding letters of credit.

4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the insolvent company/person consents to an earlier enforcement.

DATED at Toronto this 16th day of May, 2016.

SALUS CAPITAL PARTNERS, LLC

by its solicitors, Aird & Berlis LLP

Per: 

Sam Babe
Brookfield Place, Suite 1800
181 Bay Street, Box 754
Toronto, ON M5J 2T9
Tel: 416-863-1500
Fax: 416-863-1515

ACKNOWLEDGMENT AND CONSENT
(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))

TO: SALUS CAPITAL PARTNERS, LLC
and its solicitors, Aird & Berlis LLP

Forever Jewellery Inc. hereby acknowledges the receipt of a Notice of Intention to Enforce Security of Salus Capital Partners, LLC pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Salus Capital Partners, LLC's solicitors, on the date hereof and does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

DATED this 12th day of May, 2016

FOREVER JEWELLERY INC.

Per: _____

Name:

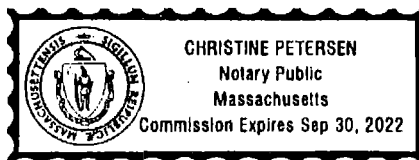
Authorized Signing Officer

EXHIBIT “K”

Attached is Exhibit "K" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Court File No. CV-16-11397-00CL

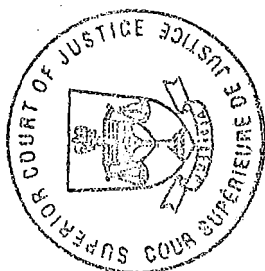
**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

) WEDNESDAY, THE 18TH

MR. JUSTICE NEWBOULD

) DAY OF MAY, 2016



IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN
CANADA LTD.

Applicant

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Ben Moss Jewellers Western Canada Ltd. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Naveed Manzoor sworn May 16, 2016 and the Exhibits thereto (the "**Initial Affidavit**"), the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant dated May 17, 2016, and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC ("**Salus**"), and A&M and on reading the consent of A&M to act as the monitor of the Applicant (the "**Monitor**"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), which for greater certainty does not include Consignment Goods (as defined below). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, valuers, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the Cash Management System (as defined and described in the Initial Affidavit) or, with the consent of the Monitor and Salus, replace it in part or in whole with another substantially similar central cash management system and that any present or future bank or other Person (as hereinafter defined) providing any part of the Cash Management System, including without limitation,

Canadian Imperial Bank of Commerce, Bank of Montreal, the Royal Bank of Canada, the Toronto-Dominion Bank and the Bank of Nova Scotia, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that, subject to availability under the DIP Facility (as defined herein) and in accordance with the Budget (as defined in the DIP Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and reasonable expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) amounts necessary in order to continue to honour or comply with existing return policies, gift cards and similar programs offered by the Applicant;
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicant prior to the date of this order or to obtain the release of goods contracted for prior to the date of this Order by third party suppliers if, in the opinion of the Applicant, the supplier is critical to the Business and ongoing operations of the Applicant;

- (e) any other costs or expenses that are deemed necessary for the preservation of the Property and/or the Business by the Applicant with the consent of the Monitor and Salus.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and directors and officers tail and/or run off insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that, except as specifically permitted herein and subject to the Budget and the terms of the DIP Facility, the Applicant is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date, provided however that the Applicant is hereby authorized and directed to make all such payments under the DIP Agreement, including the Pre-Petition Liabilities (as defined in the DIP Agreement) in accordance with the DIP Facility;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$200,000 in any one transaction or \$500,000 in the aggregate provided that, with respect to any leased premises, the Applicant may permanently but not temporarily cease, downsize or shut down unless provided for in the applicable lease;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) in accordance with paragraphs 12 and 13, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;
- (e) under the supervision of the Monitor, pursue all avenues of refinancing the Business or Property, in whole or part, and market the Business and the Property in accordance with the RISP (as defined herein).

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including June 15, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant, the CRO (as defined below) or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting

the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. THIS COURT ORDERS that during the Stay Period, no Proceeding shall be commenced or continued: (i) against or in respect of J.S.N. Jewellery Inc. ("JSN") with respect to any guarantee, contribution or indemnity obligation, liability or claim in respect of, or that relates to, any agreement involving the Applicant, or the obligations, liabilities and claims of, against or affecting the Applicant or the Business (collectively, the "**Applicant Related Liabilities**"); (ii) against or in respect of any of JSN's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**JSN Property**") with respect to any Applicant Related Liabilities (the matters referred to in (i) and (ii) being, collectively, the "**Proceedings Against JSN**"), except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings Against JSN currently under way by any Person are hereby stayed and suspended pending further order of this Court, provided however that this paragraph shall only be effective as against Persons to whom there are no amounts due and owing by the Applicant as of the date of this Order and to whom the ongoing payment of amounts that will become payable in the ordinary course are provided for in the Applicant's cash flow statements, and provided further that this paragraph shall not apply to a real property landlord of the Applicant that provides the Applicant and Salus with five (5) days' written notice that it intends to commence or continue a Proceeding Against JSN.

NO EXERCISE OF RIGHTS OR REMEDIES

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant, the CRO or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any Person against or in respect of any of JSN or JSN Property in respect of any Applicant Related Liabilities are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower JSN to carry on any business which JSN is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien, provided however that this paragraph shall only be effective as against Persons to whom there are no amounts due and owing by the Applicant as of the date of this Order and to whom the ongoing payment of amounts that will become payable in the ordinary course are provided for in the Applicant's cash flow statements, and provided further that this paragraph shall not apply to a real property landlord of the Applicant that provides the Applicant and Salus with five (5) days' written notice that it intends to exercise any right or remedy against or in respect of any of JSN or JSN Property in respect of any Applicant Related Liabilities.

NO INTERFERENCE WITH RIGHTS

18. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, disaster recovery, centralized banking services, payroll and benefits services, insurance, transportation services, freight services, utility, customs clearing, gemstone grading, warehouse and logistics services, security services or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers,

facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

APPOINTMENT OF CRO

22. THIS COURT ORDERS that FAAN Advisors Group Inc. ("FAAN") be and is hereby appointed Chief Restructuring Officer of the Applicant ("CRO"). The CRO shall have the authority to direct the operations and management of the Applicant and the Restructuring, and the officers of the Applicant shall report to the CRO. For greater certainty, the CRO shall be entitled to exercise any powers of the Applicant set out herein, to the exclusion of any other Person (including any board member of the Applicant). The CRO shall provide timely updates to the Monitor in respect of its activities.

23. THIS COURT ORDERS that the CRO shall not be or be deemed to be a director, officer or employee of the Applicant.

24. THIS COURT ORDERS that nothing in this Order shall be construed as resulting in FAAN or the CRO being an employer, successor employer, responsible person or operator within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever.

25. THIS COURT ORDERS that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

26. THIS COURT ORDERS that (i) any indemnification obligations of the Applicant in favour of the CRO and (ii) the payment obligations of the Applicant to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge set out herein.

27. THIS COURT ORDERS that any claims of the CRO shall be treated as unaffected in any Plan filed by the Applicants under the CCAA or any proposal ("**Proposal**") under the *Bankruptcy and Insolvency Act* (the "**BIA**").

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1.5 million, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 61 and 63 herein.

30. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

REFINANCING AND/OR INVESTMENT SOLICITATION PROCESS

31. THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence, under the supervision and with the assistance of the Monitor, a Refinancing and/or Investment Solicitation Process in accordance with the terms attached hereto as Schedule "A" to this Order (the "**RISP**") for the purpose of offering the opportunity for potential investors to refinance all or part of the Credit Facilities (as defined in the RISP), to invest in the Applicant and/or JSN., and/or purchase all or a portion of the Property.

32. THIS COURT ORDERS that the RISP is hereby approved and the Applicant, the CRO and the Monitor are hereby authorized and directed to perform each of their obligations thereunder.

33. THIS COURT ORDERS that: (i) nothing in the RISP shall amend or vary, or be deemed to amend or vary the terms of a real property lease; and (ii) where any real property leases are not, in accordance with their terms, transferrable or assignable to a Successful Bidder(s) who has submitted the Successful Bid(s) (as such terms are respectively defined in the RISP), without first obtaining the consent of the applicable landlord, no such real property leases shall be transferred conveyed, assigned or vested in any such successful bidder(s), save and except: (A) to the extent that the respective consents have been obtained from the applicable landlords; or (B) upon further Order of this Court.

STORE SALE

34. THIS COURT ORDERS that with respect to the Consulting & Agency Agreement dated as of April 28, 2016 between Gordon Brothers Canada ULC (the "**Agent**") and the Applicant (the "**Agency Agreement**"), the Agent is authorized to conduct a sale (the "**Sale**") to liquidate the Merchandise and FF&E, as applicable (as both terms are defined in the Agency Agreement),

in the Applicant's stores (the "Stores") in accordance with this Order and, subject to paragraph 35 below, the Agency Agreement, and to advertise and promote the Sale within the Stores in accordance with the terms hereof and thereof.

35. THIS COURT ORDERS that notwithstanding the terms of the Agency Agreement, the Agent shall conduct the Sale in accordance with sale guidelines to be agreed to between the Applicant, the Agent, Salus and the landlords of the Stores that have contacted the Applicant (the "Sale Guidelines"), which Sale Guidelines shall be consistent with standard court-approved sale guidelines and which the Applicant shall seek approval of at its next motion before this Court.

36. THIS COURT ORDERS that the Agent, in its capacity as agent of the Applicant, is authorized to market and sell the Merchandise and FF&E free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Charges (as defined below), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all of such Claims, charges (including the Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order, will attach instead to the proceeds of sale of such Merchandise or FF&E received or to be received by the Applicant under the Agency Agreement from and after the date hereof, in the same order and priority as they existed on the date the Sale was commenced.

37. THIS COURT ORDERS that subject to the terms of this Order, the Agent shall have the right to enter and use the Store locations and all related Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Store locations, and other assets of the Applicant as designated under the Agency Agreement, for the purpose of conducting the Sale and, for such purposes, the Agent shall be entitled to the benefit of the

Applicant's stay of proceedings provided under this Order, as such stay of proceedings may be extended by further order of the Court.

AGENT LIABILITY

38. THIS COURT ORDERS that the Agent shall act solely as an agent to the Applicant and that it shall not be liable for any claims against the Applicant other than as expressly provided in the Agency Agreement. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Applicant's employees located at the Stores or any other property of the Applicant;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) the Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages fines, damages or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except in accordance with the Agency Agreement.

39. THIS COURT ORDERS that to the extent that any landlord may have a claim against the Applicant arising solely out of the conduct of the Agent in conducting the Sale for which the Applicant has claims against the Agent under the Agency Agreement, then the Applicant shall be deemed to have assigned free and clear such claims to the applicable landlord (the "**Assigned Landlord Rights**"); provided that each such landlord shall only be permitted to advance each such claim against the Agent if: (i) written notice, including the reasonable details of such claim (the "**Landlord Damage Claim**"), is provided by such landlord to the Agent and the Applicant within 15 days of the date that the landlord is provided with access to the leased premises to inspect the leased premises (which access shall be provided by the Applicant within fifteen (15)

days following the Sale Termination Date (as defined in the Agency Agreement)) (the "Landlord Notice of Claim"); (ii) the Applicant has not commenced a claim against the Agent for the Landlord Damage Claim in a commercially reasonable manner within twenty (20) business days of receipt of the Landlord Notice of Claim; and (iii) the landlord has commenced its Landlord Damage Claim within 45 business days of the date of its Landlord Notice of Claim.

AGENT AN UNAFFECTED CREDITOR

40. THIS COURT ORDERS that the Agency Agreement, including the Assigned Landlord Rights contained therein, shall not be repudiated, resiliated or disclaimed by the Applicant nor shall the claims of the Agent pursuant to the Agency Agreement be compromised or arranged pursuant to any Plan filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA.

41. THIS COURT ORDERS that the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan or Proposal. For greater certainty, the Agent shall not be affected by any stay of proceedings with respect to non-payment under the Agency Agreement and the Agent shall, subject to the terms of the Agency Agreement, be entitled to exercise its remedies for non-payment under the Agency Agreement.

BULK SALES ACT AND OTHER LEGISLATION

42. THIS COURT ORDERS AND DECLARES that the transactions contemplated under the Agency Agreement shall be exempt from the application of any applicable *Bulk Sales Act* and any other equivalent federal or provincial legislation.

43. THIS COURT ORDERS that pursuant to clause 7(3) (c) of the Canada *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), the Applicant is authorized and permitted to disclose to the Agent all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees and that the Agent shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects similar to the prior use of such information by the Applicant.

CONSIGNMENT GOODS

44. THIS COURT ORDERS that the proceeds from the sale of any goods that were supplied to the Applicant on a consignment basis, as determined by the Monitor in its sole discretion ("**Consignment Goods**"), shall be returned by the Applicant to the supplier of such Consignment Goods on terms to be agreed upon between the Applicant and such supplier. For greater certainty, this paragraph shall apply to the proceeds from Consignment Goods that were sold both prior to and following the date of this Order.

APPOINTMENT OF MONITOR

45. THIS COURT ORDERS that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

46. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) liaise with the CRO, the Agent and Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) assist the Applicant, to the extent required by the Applicant, in its dissemination of, to the DIP Lender and its counsel, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (e) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis in accordance with the Definitive Documents;
- (f) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and/or data held by third parties, and other financial documents of the Applicant (whether held by the Applicant or by a third-party and regardless of whether such third party is an affiliate or related party of the Applicant), to the extent that is necessary to adequately assess the Applicant's business and historical and/or prospective financial affairs or to perform its duties arising under this Order;
- (i) consult with the Applicant, the CRO, the Agent and any Assistants retained in connection with the Restructuring;
- (j) supervise and assist the Applicant with the implementation of the RISP;
- (k) be at liberty to engage independent legal counsel or such other persons, or utilize the services of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

47. THIS COURT ORDERS that the Monitor is hereby authorized to prepare and provide reporting relating to the Guarantors (as defined in the DIP Agreement) to the DIP Lender, including in respect of supplier or other payments made by the Guarantors.

48. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the

Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

49. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

50. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

51. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

52. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings subject to any assessments of the Court. The Applicant is hereby authorized and directed to pay the accounts of the CRO, the Monitor, counsel for the Monitor, counsel for the Applicant and counsel to Joseph Shilon (to the extent the Applicant has agreed to pay such accounts to counsel to Joseph Shilon) on a weekly basis and, in addition, the Applicant is hereby authorized to pay or to have paid to, as applicable, the CRO, the Monitor, counsel to the Monitor and counsel to the Applicant retainers in the amounts of \$25,000, \$100,000, \$50,000 and \$75,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

53. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

54. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, the Applicant's counsel and counsel to Joseph Shilon shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$600,000, as security for their professional fees and disbursements incurred by the Applicant at the standard rates and charges of the CRO, the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings, provided however that the Administration Charge shall not secure the professional fees and disbursements of Joseph Shilon's counsel that are incurred by the Applicant after the date of this Order. The Administration Charge shall have the priority set out in paragraphs 61 and 63 hereof.

DIP FINANCING

55. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a revolving credit facility (the "**DIP Facility**") in order to finance the Applicant's working capital requirements and other general corporate purposes and other expenditures in accordance with the Applicant's cash flow statements pursuant and subject to the terms and conditions set forth in the Credit Agreement between Salus as collateral and

administrative agent (the "**DIP Agent**"), the lenders thereunder (the "**DIP Lenders**"), the Applicant and various guarantors dated as of May 17, 2016 (the "**DIP Agreement**"), provided that borrowings under such DIP Facility shall not exceed the principal amount of the U.S. dollar equivalent to CDN\$8,000,000 unless permitted by further Order of this Court and further provided that borrowings under the DIP Facility shall not exceed \$3.5 million prior to May 26, 2016, the date of the Comeback Hearing.

56. THIS COURT ORDERS that the DIP Facility and the DIP Agreement be and are hereby approved and the Applicant is hereby authorized and directed to execute and deliver the DIP Agreement.

57. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, amendments and other definitive documents (collectively, and together with the DIP Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

58. THIS COURT ORDERS that the DIP Agent shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the Property, which DIP Charge shall be in the aggregate amount of the obligations outstanding at any given time under the DIP Facility. The DIP Charge shall not secure any obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 61 and 63 hereof.

59. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents, the DIP Agent, upon 2 business days' notice to the Applicant and the Monitor and upon

approval of this Court, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

60. THIS COURT ORDERS AND DECLARES that the DIP Lenders and the lenders under the Credit Facilities shall be treated as unaffected in any Plan filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA, with respect to all advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

61. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$600,000);

Second – DIP Charge; and

Third – Directors' Charge (to the maximum amount of \$1.5 million).

62. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

63. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other Encumbrances in favour of any Person, other than any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation.

64. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

65. THIS COURT ORDERS that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Definitive Documents caused by or resulting from the Applicant

entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Applicant pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

66. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

67. THIS COURT DECLARES that, pursuant to Section 7(3)(c) of PIPEDA and any regulations promulgated under authority of that Act, as applicable (the "**Relevant Enactment**"), the Applicant and the Monitor, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Applicant and the Monitor binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall, upon the request of the Applicant or the Monitor, return the personal information to the Applicant and the Monitor or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicant.

SERVICE AND NOTICE

68. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) and the Winnipeg Free Press a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

69. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/> shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/benmoss (the "**Monitor's Website**").

70. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

71. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

72. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

73. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

74. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

75. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

76. A comeback hearing in this matter shall be held on May 26, 2016 (the "**Comeback Hearing**").

77. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 26 2016

PER / PAR: 

IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN CANADA LTD.

APPLICANT

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8
Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908
Michael De Lellis (LSUC #: 48038U)
Tel: 416.862.5997
Karin Sachar (LSUC#: 59944E)
Tel: 416.862.5949

Lawyers for the Applicant

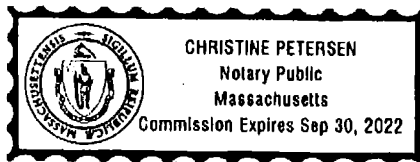
Matter No: 1172245

EXHIBIT “L”

Attached is Exhibit "L" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

May 26, 2016

Dave Rosenblat
 Direct Dial: 416.862.5673
 drosenblat@osler.com

Montréal

Calgary

SENT BY E-MAIL

Ottawa

Vancouver

New York

Forever Jewellery Inc.
 132 Jardin Drive
 Suite 123952756
 Concord, ON

Attention: Itria Buso

Dear Ms. Buso:

Payment by P.M.R. Inc. ("PMR")

As you may be aware, we are counsel to PMR and certain of its affiliated companies. On May 12, 2016, FAAN Advisors Group Inc. (the "**CRO**") was engaged by PMR, among others, to serve as its chief restructuring officer. As part of this engagement, the authority to direct the operations and management of PMR was delegated to the CRO.

We understand that on May 16, 2016, the amount of \$174,418.89 (the "**Payment**") was paid by PMR to Forever Jewellery Inc. ("**FJI**"). The Payment was neither authorized nor approved by the CRO.

As you may also be aware, on May 18, 2016, Ben Moss Jewellers Western Canada Ltd. commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act* and Alvarez & Marsal Canada Inc. was appointed as monitor (the "**Monitor**"). The Monitor has made inquiries into the Payment and has advised the CRO that the Payment was made outside the ordinary course of business and is improper.

We therefore hereby demand FJI to immediately return the Payment by wire transfer or certified cheque in the amount of \$174,418.89 payable to the order of "P.M.R. Inc." on or before May 30, 2016. If FJI fails to pay this amount immediately, and in any event, by May 30, 2016, PMR will pursue such further action, remedy or proceeding available to it at law, equity or otherwise.

OSLER

Page 2

Yours very truly,



Dave Rosenblat
Associate

DR:

cc.

Naveed Manzoor, *FAAN Advisors Group Inc.*
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*
Adam Zalev, *Alvarez & Marsal Canada Inc.*
Natasha MacParland, *Davies, Ward, Phillips & Vineberg LLP*
Joseph Shilon

EXHIBIT “M”

Attached is Exhibit "M" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



The logo for Davies Ward Phillips & Vineberg LLP, featuring the word "DAVIES" in white capital letters on a black rectangular background.

155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

May 27, 2016

Natasha MacParland
T 416.863.5567
F 416 863 0871
nmacparland@dwpv.com

BY EMAIL

TO:
Joseph Shilon
Itria Buso,
Carla Eisnor
Gila Shilon

Dear Sirs/Mesdames:

Information Request

We are counsel to Alvarez & Marsal Canada Inc. in its capacity as court-appointed monitor (the "**Monitor**") of Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**") in respect of its proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Monitor was appointed pursuant to an amended and restated order of the Ontario Superior Court of Justice dated May 18, 2016 (the "**Initial Order**"), which can be found on the Monitor's website at: <http://www.alvarezandmarsal.com/ben-moss-jewellers-western-canada-ltd/court-orders>

Pursuant to the Initial Order, the Monitor was appointed as a court-officer to supervise and monitor the business and financial affairs of Ben Moss and empowered to have full and complete access to financial information of Ben Moss, whether held by Ben Moss or a third party. The Monitor is also authorized to provide reporting relating to JSN Jewellery Inc., JSN Jeweller UK Limited, 2373138 Ontario Inc., Always and Forever Family Collection Incorporated, P.M.R. Inc., Forever Jewellery Inc. and GMJ Corporation (collectively, the "**Guarantors**"), including in respect of payments made by the Guarantors.

The Monitor has become aware of certain payments made by, and between, the Guarantors and other affiliated entities which may have implications for Ben Moss and its CCAA proceedings. We are of the view that it is in the best interests of Ben Moss and its stakeholders to immediately investigate these matters.

Accordingly, we hereby request you to deliver, or make available, the following information in respect of the Guarantors, My Diamond Private Limited, Global Diamonds (G.D.) Ltd., Utopia

Jewellery Co., Utopia Diamond Inc., Whitpay Inc., SUM Investments Inc., Shilon Holdings Inc. and Canada Cuts Diamonds Facility Inc. (collectively, the "**JSN Entities**");

1. all books, records, data, including data in electronic form and/or data held by third parties, of the JSN Entities; and
2. all financial documents of the JSN Entities, including financial statements, cheque requisitions, bank statements and tax returns for the last three years,

(collectively, the "**Requested Information**").

Please provide us with the Requested Information that is in your possession **no later than the close of business on Tuesday, May 31, 2016**. If you fail to respond to this letter or deliver the Requested Information by May 31, 2016, the Monitor will pursue such further action, remedy or proceeding available to it at law, equity or otherwise.

In addition, as you may be aware, on May 12, 2016, FAAN Advisors Group Inc. (the "**CRO**") was engaged by PMR, among others, to serve as its chief restructuring officer. As part of this engagement, the authority to direct the operations and management of the Guarantors was delegated to the CRO.

In that regard, please be reminded that under no circumstances can any payments, fund transfers or transfers of other property, including inventory, be made by any Guarantor, or any person purporting to act on behalf of a Guarantor, that is outside of the ordinary course of business without the explicit authorization of the CRO.

Yours very truly,



Natasha MacParland

NM/nr

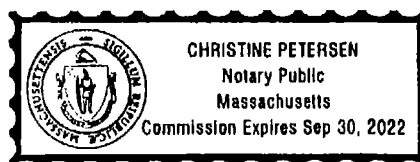
cc Adam Zalev, *Alvarez & Marsal Canada Inc.*
Michael De Lellis, *Osler, Hoskin, Harcourt LLP*
Naveed Manzoor, *FAAN Advisors Group Inc.*
Harvey Chaiton, *Chaitons LLP*

EXHIBIT “N”

Attached is Exhibit "N" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Sam Babe
Direct: 416.865.7718
E-mail: sbabe@airdberlis.com

June 10, 2016

Our File No.: 131783

J.S.N. Jewellery Inc.
64 Jardin Drive, Unit #7
Concord, ON L4K 3P3

Attention: Naveed Manzoor, Chief Restructuring Officer

Dear Sirs/Mesdames:

Re: Salus Capital Partners, LLC Loans to J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp. and Ben Moss Jewellers Western Canada Ltd. (the "Borrowers")

As you are aware, we are counsel to Salus Capital Partners, LLC ("**Salus**") in connection with its lending arrangements with the Borrowers pursuant to: (i) a Credit Agreement dated as of July 18, 2013 among, Salus as administrative agent and collateral agent, the lenders thereunder (the "**Lenders**"), the Borrowers and the guarantors thereunder (as amended, replaced, restated or supplemented from time to time the "**Credit Agreement**"); and (ii) a Super Priority DIP Credit Agreement dated May 16, 2016 between Salus, as administrative and collateral agent, the lenders thereunder, Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**"), as borrower, and the guarantors thereunder (the "**DIP Credit Agreement**").

Pursuant to an Accommodation Agreement dated May 16, 2016 between the parties to the DIP Credit Agreement and certain of their affiliates (the "**Accommodation Agreement**"), Salus and the Lenders agreed, among other things, to extend further credit to the Borrowers in the face of multiple Events of Default under the Credit Agreement, and to forbear from enforcement of their security in light of such Events of Default.

The Borrowers are obligated under the Accommodation Agreement to, among other things, comply with and generally operate their businesses in a manner consistent with the Cash Flows (as defined in the Accommodation Agreement) and, in no event permit any negative variance from the Cash Flows of sales, cash receipts, expenditures, loan balances, borrowing base calculations, inventory receipts/purchases, inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and on a negative variance of availability by more than 10%, tested weekly.

The Borrowers' variance report for the two-week period ended May 27, 2016 shows negative variances materially in excess of 10% in, among others items, cash receipts and cash flows.

Any decision by Salus and the Lenders to make further advances under the Credit Agreement or the DIP Credit Agreement or not to enforce (or, in the case of Ben Moss, not to seek court approval in Ben Moss' *Companies' Creditors Arrangement Act* proceedings to enforce) any of

their rights and remedies shall in no way constitute a waiver of the aforesaid breaches and, on their behalf, we hereby expressly reserves any and all of their rights and remedies under the Credit Agreement, the DIP Credit Agreement, any and all documents and agreements ancillary thereto and the initial order in Ben Moss' *Companies' Creditors Arrangement Act* proceedings, as amended, made May 18, 2016.

Yours truly,

AIRD & BERLIS LLP,

Sam Babe

cc. Kyle Shonak, *Salus Capital Partners, LLC*
Adam Zalev, *Alvarez & Marsal Canada Inc.*
Michael De Lellis, *Osler, Hoskin, Harcourt LLP*
Natasha MacParland, *Davies Ward Phillips & Vineberg LLP*

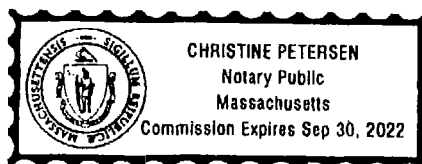
EXHIBIT “O”

26551606.1

Attached is Exhibit "O" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



AIRD & BERLIS LLP

Barristers and Solicitors

Sam Babe
Direct: 416.865.7718
E-mail: sbabe@airdberlis.com

526

June 21, 2016

VIA COURIER

Forever Jewellery Inc.
132 Jardin Drive, Suite 123952756
Concord, ON L4K 1X9

Attention: Gila Althuser

Dear Madam:

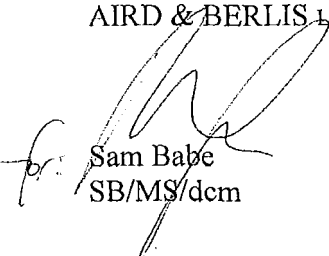
Re: An accommodation agreement dated May 16, 2016 (the "Accommodation Agreement") between Salus Capital Partners, LLC as administrative agent, collateral agent, and lender (the "Agent"), Salus CLO 2012-1 Ltd., J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp., Ben Moss Jewellers Western Canada Ltd., 2373138 Ontario Inc., Forever Jewellery Inc., Always & Forever Family Collection Incorporated, P.M.R. Inc. and Joseph Shilon

As you are aware, we are counsel to the Agent in connection with the Accommodation Agreement referred to above.

As a matter of courtesy, we are providing you with a copy of the enclosed Notice of Lender Enforcement Action in respect of Joseph Shilon and Forever Jewellery Inc.

Yours truly,

AIRD & BERLIS LLP


for: Sam Babe
SB/MS/dcm

Encl.

26518989.1

NOTICE OF LENDER ENFORCEMENT ACTION

TO: JOSEPH SHILON

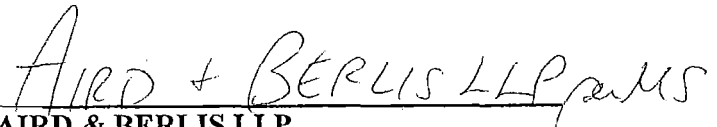
AND TO: FOREVER JEWELLERY INC.

RE: An accommodation agreement dated May 16, 2016 (the "**Accommodation Agreement**") between Salus Capital Partners, LLC as administrative agent, collateral agent, and lender (the "**Agent**"), Salus CLO 2012-1 Ltd., J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp., Ben Moss Jewellers Western Canada Ltd., 2373138 Ontario Inc., Forever Jewellery Inc., Always & Forever Family Collection Incorporated, P.M.R. Inc. and Joseph Shilon

All capitalized terms used herein and not otherwise defined shall the same meaning as ascribed to such terms in the Accommodation Agreement

As of the date hereof, a Forbearance Termination Event has occurred. As a consequence of same, and pursuant to subsection 4.1(c) of the Accommodation Agreement, the Agent hereby provides notice that it intends to take Lender Enforcement Action as against Joseph Shilon and Forever Jewellery Inc.

DATED the 21st day of June, 2016.


AIRD & BERLIS LLP
Lawyers for Salus Capital Partners, LLC

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

Court File No. CV-16-____-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

AFFIDAVIT OF ANDREW PRUNIER
(sworn June 23, 2016)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Sam Babe (LSUC #49498B)
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Miranda Spence (LSUC #60621M)
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Email: mspence@airdberlis.com

Lawyers for Salus Capital Partners, LLC

TAB 7

Court File No. CV-16-_____-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

CONSENT

The undersigned, Richter Advisory Group Inc. ("**Richter**"), hereby consents to the appointment of Richter as interim receiver and receiver, without security, of all of the assets, undertakings and property of Forever Jewellery Inc., pursuant to the provisions of subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the terms of an order substantially in the form filed in the above proceeding.

DATED at Toronto, this 24th day of June, 2016.**RICHTER ADVISORY GROUP INC.**

Per:



Name: Paul van Eyk
Title: Senior Vice President

SALUS CAPITAL PARTNERS, LLC

Applicant

- and -

FOREVER JEWELLERY INC.

Respondents

Court File No. CV-16-____-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

CONSENT

AIRD & BERLIS LLP
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Email: mspence@airdberlis.com

Lawyers for Salus Capital Partners, LLC

SALUS CAPITAL PARTNERS, LLC

and

FOREVER JEWELLERY INC.

(Short title of proceeding)

Court File No. CV-16-11439-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDINGS COMMENCED AT TORONTO**

**APPLICATION RECORD
(Application returnable June 27, 2016)

(VOLUME II OF II)**

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario
M5J 2T9

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Lawyers for Salus Capital Partners, LLC